

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

NATIONAL LABOR RELATIONS BOARD,	:	
	:	
Applicant,	:	
	:	No. 20-3133
v.	:	
	:	
HAMILTON PARK HEALTH CARE CENTER,	:	
CONFIDENCE MANAGEMENT SYSTEMS AT	:	
HAMILTON PARK HEALTH CARE CENTER,	:	
	:	
Respondents,	:	
	:	
JOHN DOES 1 THRU 5, FICTITIOUS RESPONDENTS,	:	
	:	
Additional Respondents in Contempt.	:	
	:	

**NATIONAL LABOR RELATIONS BOARD’S MOTION
FOR AN ORDER COMPELLING DISCOVERY AND IMPOSING SANCTIONS**

To the Honorable Timothy R. Rice
Magistrate Judge:

The National Labor Relations Board (the “Board”) respectfully moves the Court to compel Hamilton Park Health Care Center (“Hamilton Park”) and Confidence Management Systems at Hamilton Park Health Care Center (“CMS”) (jointly, “Respondents”) to fully comply with their discovery obligations and produce complete responses to the Board’s First Set of Interrogatories (“Interrogatories”) and its First Request for Production of Documents (“Request for Documents”). This Motion is accompanied by a Brief in Support, a Proposed Order, and a Certification By Counsel of Attempt to Resolve Discovery Dispute. In support of the Board’s Motion to Compel, the Board submits the following:

1. On October 20, 2020, the Board filed its Petition for adjudication in contempt with this Court [ECF No. 1] and, on November 10, 2020, Respondents filed their Response. [ECF No. 8].

2. On January 20, 2021, a panel of the Third Circuit Court of Appeals referred this matter to Special Master Timothy R. Rice for determinations on issues of fact and law. [ECF No. 11].

3. On January 22, 2021, Special Master Rice held a scheduling conference and subsequently issued an Order establishing a discovery schedule in the instant matter. [ECF No. 13]. Under that schedule, the parties were required to complete discovery by May 28, 2021 and submit all pretrial memoranda by June 7, 2021, with a trial date set for June 9, 2021.

4. On February 11, 2021, the Board served Respondents with the Board's First Set of Interrogatories. [Exhibit A].

5. On February 12, 2021, the Board served Respondents with the Board's First Request for Production of Documents. [Exhibit B].

6. On March 18, 2021, Respondents provided responses to both the Board's Interrogatories and the Board's Request for Documents. [Exhibits C & D].

7. On April 7, 2021, the Board sent counsel for Respondents, David F. Jasinski, a letter pursuant to Rule 37(a) of the Federal Rules of Civil Procedure setting forth several deficiencies in Respondents' responses to the Board's Interrogatories and to the Board's Request for Documents. [Exhibit E]. Initially, the Board objected to the responses to the Interrogatories as facially deficient because they were not signed

under oath by a party as required by Rule 33(b)(1), (3), and (5) of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 33(b). The Board also objected to the use of boilerplate objections in both the responses to interrogatories and document requests, in direct contravention of Federal Rules of Civil Procedure 33(b)(4) and 34(b)(2)(C). This letter also went through over a dozen specific responses to interrogatories and document requests and detailed the exact deficiencies that the Board identified in each. The Board requested that the parties meet to resolve the discovery dispute as soon as possible.

8. On April 15, 2021, the Board sent a letter advising the Court on the status of discovery, pending disputes between the parties, and the Board's attempts to meet and confer with Mr. Jasinski. [ECF No. 14].

9. On April 19, 2021, Special Master Rice scheduled a telephonic conference for April 21, 2021 to discuss contempt proceedings for discovery abuse by Respondents. [ECF No. 15]. Due to technical difficulties, the conference was held on April 22, 2021. [ECF No. 16].

10. On April 22, 2021, Special Master Rice issued an Order amending the January 22, 2021 scheduling order. [ECF No. 17]. This Order extended the deadlines for discovery and pretrial motions to July 1, 2021 and August 2, 2021, respectively, and set a trial date for October 4, 2021.

11. The Order also required Respondents to provide supplemental responses on April 28, 2021 to remedy the discovery deficiencies identified by the Board. If those

supplemental responses did not remedy the deficiencies, the Order instructed the Board to file a Motion to Compel and for Sanctions by May 5, 2021.

12. On April 28, 2021, Mr. Jasinski sent a five-page supplemental response to both the Board's Interrogatories and its Request for Documents. [Exhibit F]. After reviewing the supplemental response, the Board found that, like the response before, it was materially deficient in numerous ways. For example, despite the Board's prior objection, the supplemental interrogatory responses were still not signed by a party or verified under oath as required by Federal Rule of Civil Procedure 33(b)(1), (3), and (5). *See* Fed. R. Civ. P. 33(b). Similarly, no actual documents were produced as part of the supplemental response, despite Respondents' failure to object with specificity and state whether any responsive materials were being withheld on the basis of objections. *See* Fed. R. Civ. P. (34)(b)(2)(C).

13. On April 30, 2021, the Board filed its Unopposed Motion to Extend Time to File Motion to Compel Responses To Discovery Requests and Sanctions [ECF #18], which the Court granted on May 5. [ECF #19].

Wherefore, the Board respectfully requests that the Court issue an order requiring Respondents to fully remedy the deficiencies in its responses to the Board's First Set of Interrogatories and Board's First Request for Production of Documents within fourteen (14) days. The Board also respectfully requests that the Court impose sanctions directing Respondents to reimburse the Board for reasonable costs and attorney's fees incurred in preparing the instant motion,

striking Respondents' affirmative defenses to the Board's Petition, and holding Respondents in contempt pursuant to Federal Rule of Civil Procedure 37(b)(2)(A)(vii).

NATIONAL LABOR RELATIONS BOARD

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Dated at Washington, DC
this 19th day of May, 2021

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

NATIONAL LABOR RELATIONS BOARD,	:	
	:	
Applicant,	:	
	:	No. 20-3133
v.	:	
	:	
HAMILTON PARK HEALTH CARE CENTER,	:	
CONFIDENCE MANAGEMENT SYSTEMS AT	:	
HAMILTON PARK HEALTH CARE CENTER,	:	
	:	Referral:
Respondents,	:	Timothy R. Rice,
	:	U.S.M.J.
JOHN DOES 1 THRU 5, FICTITIOUS RESPONDENTS,	:	Special Master
	:	
Additional Respondents in Contempt.	:	
	:	

NATIONAL LABOR RELATIONS BOARD’S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Paragraph 3 of the Court’s January 20, 2021 Order (ECF No. 11), the National Labor Relations Board (“the Board”) directs the following Interrogatories to Respondents Hamilton Park Health Care Center and Confidence Management Systems at Hamilton Park Health Care Center.

INSTRUCTIONS

A. Respondents are required to answer each interrogatory in writing, under oath, separately and fully, and to serve its answers upon counsel for the General Counsel of the Board, in the Contempt, Compliance and Special Litigation Branch, located at: 1015 Half Street SE, 4th Floor, Washington D.C. 20003.

Alternatively, electronic copies of the answers may be provided, via electronic mail or otherwise.

B. You are required to respond to this request within 30 days of receipt.

C. If objection is made to any request for discovery, or any part thereof, you are requested to set forth with particularity the specific objection as to each part.

D. Should you claim that any of the requested information is privileged, please provide a detailed privilege log meeting the requirements of Rule 26(b)(5)(A) of the Federal Rules of Civil Procedure.

E. These requests are continuing in character and if additional responsive information comes to your attention following the date of your formal response to this request, such information must be promptly provided.

F. “Judgment” refers to the judgment entered by the United States Court of Appeals for the Third Circuit in Case No. 18-1207 on May 7, 2018.

G. “Consent Order” refers to the consent order entered by the United States Court of Appeals for the Third Circuit in Case No. 18-3568 on June 18, 2020.

H. “Hamilton Park” refers to Hamilton Park Health Care Center, and any of its managers, supervisors, officers, agents, representatives, and assigns.

I. “CMS” refers to Confidence Management Systems at Hamilton Park Health Care Center, and any of its agents, representatives, and assigns.

J. “Union” refers to 1199 SEIU, United Healthcare Workers East, and any of its members, officers, agents, representatives, and assigns.

K. “Petition” refers to the Petition of the National Labor Relations Board for Adjudication in Civil Contempt and Assessment of Noncompliance Fines and for Other Civil Relief filed with the United States Court of Appeals for the Third Circuit on October 20, 2020.

L. “Answer” refers to the Answer to Petition of the National Labor Relations Board filed with the United States Court of Appeals for the Third Circuit on November 10, 2020.

M. Wherever used herein, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense and vice versa; the masculine shall be deemed to include the feminine and vice versa; the disjunctive “or” shall be deemed to include the conjunctive “and” and vice versa; each of the words “each,” “every,” “any,” and “all” shall be deemed to include each of the other words so as to require the production of each and every document responsive to the request in which such terms appear.

N. In answering these interrogatories, furnish all information, however obtained, including hearsay that is available to you and information known by or in possession of yourself, your agents and your attorney, or appearing in your records, and identify with specificity the sources of all information provided in your answers.

O. If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, so state and answer to the extent possible, specifying your inability to answer the remainder, stating

whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

P. In response to any interrogatory not expressly asking for documents, state whether there are any documents which reflect or relate to any of the information requested in that interrogatory, and identify the custodian of the documents.

Q. When addresses, telephone numbers and e-mail addresses are requested, both business and home addresses and telephone numbers are required.

R. If the person who verifies the answers to interrogatories does not have personal knowledge of the information contained in the answers, that person shall, for each answer not verified by personal knowledge, identify the person or persons from whom the information was obtained or, if the source of the information is documentary, provide a full description including the location thereof.

INTERROGATORIES

1. State the name, address and telephone number of each and every individual who contributed to or assisted in responding to these interrogatories.

2. State the name, address and telephone number of each and every individual with knowledge of each of the allegations in the Petition and the Affirmative Defenses asserted by Respondents Hamilton Park and CMS in their Answer to the Petition.

3. Describe in detail each and every fact or other form of the evidence supporting the first affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

4. Describe in detail each and every fact or other form of the evidence supporting the second affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

5. Describe in detail each and every fact or other form of the evidence supporting the third affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

6. Describe in detail each and every fact or other form of the evidence supporting the fourth affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

7. Identify each and every document or group of documents that support the first affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

8. Identify each and every document or group of documents that support the second affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

9. Identify each and every document or group of documents that support the third affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

10. Identify each and every document or group of documents that support the fourth affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

11. Identify each and every witness whose testimony supports the first affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

12. Identify each and every witness whose testimony supports the second affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

13. Identify each and every witness whose testimony supports the third affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

14. Identify each and every witness whose testimony supports the fourth affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

15. Detail all efforts made by Respondent Hamilton Park to comply with Paragraph II(a) of the Consent Order, including the actions taken, the identity of the individual who took each action, and the date of each action taken.

16. For Respondent Hamilton Park, state the name, address, telephone number and email address of each individual who was responsible for gathering, reviewing, or producing to the Union the documents required by Paragraph II(a) of the Consent Order.

17. Detail all efforts made by Respondent CMS to comply with Paragraph II(b) of the Consent Order, including the actions taken, the identity of the individual who took each action, and the date of each action taken.

18. For Respondent CMS, state the name, address, telephone number and email address of each individual who was responsible for gathering, reviewing, or producing to the Union the documents required by Paragraph II(b) of the Consent Order.

19. For the search required by Paragraph II(c) of the Consent Order, describe what efforts were made to conduct the search, including what data sources were searched, what search terms were used, what methods were used to conduct the search, when the search occurred, and the parameters of the search.

20. State the name, address, telephone number and email address of each individual who was responsible for conducting the search required by Paragraph II(c) of the Consent Order.

21. Describe all additional documents provided to the Union pursuant to Paragraph II(d) of the Consent Order or, if applicable, certify under oath that no requests for information have been made by the Union since entry of the Consent Order.

Dated: February 11, 2021

NATIONAL LABOR RELATIONS BOARD

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VERIFICATION

I hereby swear or affirm, under penalty of perjury, that the above answers to Interrogatories 1-21 are true and correct to the best of my knowledge, information, and belief.

Dated: _____, 2021

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 11th day of February, 2021, on the following by UPS Overnight and email.

David F. Jasinski
Jasinski, PC
60 Park Pl., 8th floor
Newark, NJ 07102
djasinski@jplawfirm.com

s/ Molly G. Sykes
MOLLY G. SYKES

Dated at Washington, D.C.
This 11th day of February, 2021

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

NATIONAL LABOR RELATIONS BOARD,	:	
	:	
Applicant,	:	
	:	No. 20-3133
v.	:	
	:	
HAMILTON PARK HEALTH CARE CENTER,	:	
CONFIDENCE MANAGEMENT SYSTEMS AT	:	
HAMILTON PARK HEALTH CARE CENTER,	:	
	:	Referral:
Respondents,	:	Timothy R. Rice,
	:	U.S.M.J.
JOHN DOES 1 THRU 5, FICTITIOUS RESPONDENTS,	:	Special Master
	:	
Additional Respondents in Contempt.	:	
	:	

**THE NATIONAL LABOR RELATIONS BOARD’S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Paragraph 3 of the Court’s January 20, 2021 Order (ECF No. 11), the National Labor Relations Board (“the Board”) requests that Respondents Hamilton Park Health Care Center and Confidence Management Systems at Hamilton Park Health Care Center (collectively, “Respondents”) produce and permit the Board during regular business hours to inspect, copy, photograph, or reproduce by other mechanical means, the documents set forth below, at the Board’s Newark Regional Office, located at 20 Washington Place, 5th Floor, Newark, NJ 07102, or such other place as may be agreed upon by the parties, at 5:00 p.m. on March 18, 2021. In the alternative, copies of the requested documents may be mailed to the undersigned at 1015 Half

Street, S.E., 4th Floor, Washington, DC 20003, and/or by email to molly.sykes@nrlrb.gov, so long as the documents are received by no later than March 18, 2021.

This request is continuing in character, and if additional responsive information comes to Respondents' attention following the date of the formal response, such information must be promptly provided.

It is requested that the documents be organized and labeled to correspond with the categories referred to herein.

DEFINITIONS AND INSTRUCTIONS

A. "Hamilton Park" refers to Hamilton Park Health Care Center, and any of its managers, supervisors, officers, agents, representatives, and assigns.

B. "CMS" refers to Confidence Management Systems at Hamilton Park Health Care Center, and any of its managers, supervisors, officers, agents, representatives, and assigns.

C. "The Union" refers to 1199 SEIU Healthcare Workers East, and any of its members, officers, agents, representatives, and assigns.

D. "Judgment" refers to the judgment entered by the United States Court of Appeals for the Third Circuit in Case No. 18-1207 on May 7, 2018.

E. "Consent Order" refers to the consent order entered by the United States Court of Appeals for the Third Circuit in Case No. 18-3568 on June 18, 2020.

F. "Document" means any existing printed, typewritten or otherwise recorded material of whatever character, records stored on computer or

electronically, records kept on microfiche or written by hand or produced by hand and graphic material, including without limitation, checks, cancelled checks, computer hard drives, discs and/or files and all data contained therein, computer printouts, E-mail communications and records, any marginal or “post-it” or “sticky pad” comments appearing on or with documents, licenses, files, letters, facsimile transmissions, memoranda, telegrams, minutes, notes, contracts, agreements, transcripts, diaries, appointment books, reports, records, payroll records, books, lists, logs, worksheets, ledgers, summaries of records of telephone conversations, summaries of records of personal conversations, interviews, meetings, accountants’ or bookkeepers’ work papers, records of meetings or conference reports, drafts, work papers, calendars, interoffice communications, financial statements, inventories, news reports, periodicals, press releases, graphs, charts, advertisements, statements, affidavits, photographs, negatives, slides, disks, reels, microfilm, audio or video tapes and any duplicate copies of any such material.

G. Wherever used herein, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense and vice versa; the masculine shall be deemed to include the feminine and vice versa; the disjunctive “or” shall be deemed to include the conjunctive “and” and vice versa; each of the words “each,” “every,” “any,” and “all” shall be deemed to include each of the other words so as to require the production of each and every document responsive to the request in which such terms appear.

H. Any copies of documents that are different in any way from the original, such as by interlineation, receipt stamp, notation, or indication of copies sent or received, are considered original documents and must be produced separately from the originals.

I. If any document covered by this subpoena contains codes or classifications, all documents explaining or defining the codes or classifications used in the document must also be produced.

J. If any documents responsive to any request herein was, but no longer is, in your possession, custody or control, identify the document (stating its date, author, subject, recipients and intended recipients); explain the circumstances by which the document ceased to be in your possession, custody or control; and identify (stating the person's name, employer title, business address and telephone number) all persons known or believed to have the document or a copy thereof in their possession, custody or control.

K. If any document responsive to any request herein was destroyed, discarded, or otherwise disposed of for whatever reasons, identify the document (stating its date, author, addressee(s), recipients and intended recipients, title and subject matter); explain the circumstances surrounding the destruction, discarding or disposal of the document, including the timing of the destruction; identify all personnel who authorized the destruction, discarding or disposal of the document; and identify all persons known or believed to have the document or a copy thereof in their possession, custody or control.

L. Electronically Stored Information (ESI) should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. Execution of this subpoena requires a reasonable search of the ESI of all individuals (“custodians”) who are most likely to possess information covered by the subpoena.

M. For all searches of ESI, records should be maintained documenting each “custodian” whose ESI was searched and all hardware and software systems searched. Records should also include who was responsible for the search and the search methodology used including, but not limited to, search terms and software tools.

N. All documents produced pursuant to this subpoena should be presented as they are kept in the usual course of business or organized by the paragraph to which the document or set of documents is responsive.

O. If a claim of privilege is made as to any document which is the subject of this request, set forth, for each document: the date the document was created; the name and job title of the document’s author(s); the name and job title of the document’s recipient(s); a description of the document, including its subject matter and the purpose for which it was created; and the asserted ground of privilege.

P. If any responsive document has been previously produced to the Board, you need not re-produce the document, but must identify the date and manner by which that document was produced.

DOCUMENTS TO BE PRODUCED

1. For each affirmative defense asserted by Respondents in their Answer to Petition of the National Labor Relations Board, all documents which Respondents contend support such defense.
2. Documents reflecting all correspondence between and among Hamilton Park's officers, agents, representatives, and/or assigns regarding compliance or noncompliance with the Judgment.
3. Documents reflecting all correspondence between and among Hamilton Park's officers, agents, representatives, and/or assigns regarding compliance with the Consent Order.
4. Documents reflecting all correspondence between and among CMS's officers, agents, representatives, and/or assigns regarding compliance or noncompliance with the Judgment.
5. Documents reflecting all correspondence between and among CMS's officers, agents, representatives, and/or assigns regarding compliance with the Consent Order.
6. Documents reflecting all correspondence between Hamilton Park and CMS, including their agents, representatives, and/or assigns, regarding compliance with the Consent Order.
7. Documents demonstrating the steps taken to conduct the search required by Paragraph II(c) of the Consent Order, including any Electronically Stored Information (ESI) that would reflect searches conducted electronically.

8. Documents reflecting instructions to create the affidavit required by Paragraph II(d) of the Consent Order.
9. Documents reflecting the transmittal of such affidavit or any part thereof, except for actual, nonfinal drafts of such affidavit.
10. All requests for information submitted by the Union to Respondents since entry of the Consent Order on June 18, 2020.
11. All responses to requests for information submitted by the Union to Respondents since entry of the Consent Order on June 18, 2020.
12. All correspondence between and among the Union and Respondents, including their agents, representatives, and/or assigns, related to requests for information submitted by the Union since entry of the Consent Order on June 18, 2020.
13. Minutes of Board of Director meetings and/or officer meetings for Hamilton Park concerning or which mention the Judgment and/or the Consent Order.
14. Minutes of Board of Director meetings and/or officer meeting for CMS concerning or which mention the Judgment and/or the Consent Order.

Dated: February X, 2021

NATIONAL LABOR RELATIONS BOARD

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Contempt, Compliance & Special
Litigation Branch
1015 Half St. S.E.
Washington, D.C. 20003

VERIFICATION

I hereby swear or affirm, under penalty of perjury, that the above answers to Interrogatories 1-11 are true and correct to the best of my knowledge, information, and belief.

Dated: _____, 2021

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this X day of February, 2021, on the following by UPS Overnight and email.

David F. Jasinski
Jasinski, PC
60 Park Pl., 8th floor
Newark, NJ 07102
djasinski@jplawfirm.com

s/ Molly G. Sykes
MOLLY G. SYKES

Dated at Washington, D.C.
This X day of February, 2021

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

NATIONAL LABOR RELATIONS BOARD,

Applicant,

v.

HAMILTON PARK HEALTH CARE
CENTER, CONFIDENCE MANAGEMENT
SYSTEMS AT HAMILTON PARK
HEALTH CARE CENTER,

Respondents,

JOHN DOES 1 THRU 5, FICTITIOUS
RESPONDENTS,

Additional Respondents in Contempt.

Case No. 20-3133

**RESPONDENT'S RESPONSES TO
APPLICANT'S FIRST SET OF
INTERROGATORIES**

TO: National Labor Relations Board
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1015 Half St. S.E.
Washington, D.C., 20003

COUNSEL:

Respondents Hamilton Park Health Care Center, Confidence Management Systems at
Hamilton Park Health Care Center (hereinafter "Respondents"), by its attorneys, Jasinski, P.C.,

hereby responds to Applicant National Labor Relations Board's (hereinafter "Applicant or NLRB") First Set of Interrogatories pursuant to Fed. R. Civ. P. 33 subject to the comments and qualifications set forth below.

Dated: March 18, 2021

JASINSKI, P.C.
Attorneys for Respondents

By: s/ David F. Jasinski
David F. Jasinski, Esq.

COMMENTS, QUALIFICATIONS, RECITALS, AND GENERAL OBJECTIONS

Respondents have endeavored to respond to the NLRB's interrogatories on the basis of the best information now available to them. Information obtained by Respondents from the NLRB Co-Respondents, Third Party Respondents, and/or any other person through the future utilization of discovery procedures or otherwise may be relevant to the substance of the instant responses.

1. The responses set forth herein are made without waiving, and by expressly reserving, the following.

a. Respondents object to these interrogatories on the grounds that the Relevant Time Period is overbroad.

b. Respondents object to these interrogatories on the ground that they are vague, overbroad, and unduly burdensome.

c. Respondents right to object on the grounds of competency, privilege, relevancy, materiality or any other proper ground, and to the use of any response herein or any information disclosed pursuant hereto, for any purpose, in whole or part, in any subsequent step or proceeding in this action or in any other action.

d. Respondents right to object or further object on any and all grounds, at any time, to other requests or discovery procedures involving or relating to the subject matter of the requests responded to herein.

e. Respondents right to object, to the extent a request requires information concerning, or referring to, the originals and/or copies of documents that are no longer in Defendant's custody, control or possession, as said requirement is burdensome.

f. Respondents right to object to the extent a request seeks a document which concerns, relates to or otherwise reflects information which is or may be proprietary, confidential or violates privacy interests.

g. Respondents right at any time to revise, correct, add to, or clarify any of the responses herein.

h. Respondents right to object to the NLRB's interrogatories to the extent they seek information or documents protected from disclosure by the attorney-client privilege, the deliberative process privilege, or any other evidentiary privilege, or are otherwise protected from disclosure under an applicable law or the work product doctrine.

i. Respondents right to object to the NLRB's interrogatories on the grounds they seek information prepared or developed in anticipation of litigation or for trial, when the NLRB has not shown that it is unable, without undue hardship, to obtain the substantial equivalent of such information by other means.

j. Respondents right to object to the NLRB's requests to the extent they seek the discovery of information which is irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence.

k. Respondents right to object to the NLRB's interrogatories on the grounds that their wording is vague, broad, general, and all-inclusive and that the interrogatories do not permit a proper or reasonable response and are, therefore, unduly burdensome and oppressive.

l. Respondents right to object to any inference drawn from any portion of the discovery requests, or these responses to them, that the information requested or events referred to in the requests actually exist or occurred. The failure to object to each such inference in no way

constitutes an admission by Respondents that such information exists or that such events actually occurred.

m. Respondents right to seek a confidentiality agreement or protective order.

1. Respondents right to object to the extent a request is not in the proper form of an interrogatory.

2. Without waiving the above objections, Respondents will provide relevant, non-privileged information and documents currently available to it, subject to the requirements for supplementation of responses contained in the Rules of Court.

3. In the event Respondents inadvertently disclose information that may arguably be protected from discovery under the attorney-client privilege, the work product doctrine, or any other applicable privilege, such inadvertent disclosure does not constitute a waiver of any such privilege.

* * *

The foregoing comments, qualifications, recitals, and general objections are specifically repeated and incorporated by reference, in each of Respondents' responses to the NLRB's interrogatories. In addition, Respondents reserve the right to assert legal or factual contentions, including any applicable objections, which are not set forth in the instant responses.

RESPONDENTS' ANSWERS TO THE NLRB'S INTERROGATORIES

1. State the name, address, and telephone number of each and every individual who contributed to or assisted in responding to these interrogatories.

RESPONSE: Respondents object to the extent the Interrogatory requests information covered by the attorney client privilege and seeks information protected by the attorney work-product doctrine. Notwithstanding said objections and subject thereto, David F. Jasinski, Esq., Chad Giampino, Vice President of Operations at Hamilton Park, David Sussman, General Counsel at Hamilton Park, and Kevin Woodward, Administrator for Hamilton Park.

2. State the name, address, and telephone number of each and every individual with knowledge of each of the allegations in the Petition and the Affirmative Defenses asserted by Respondents Hamilton Park and CMS in their Answer to the Petition.

RESPONSE: Respondents object to the extent the Interrogatory, is premature, calls for speculation as Respondents do not know all persons with knowledge of any facts related to the litigation at this juncture and the development of trial strategy is an ongoing process, requires Respondents to interpret the vagaries of the Petitions, requests attorney work product, seeks private information, and requests more than what is required by the rules of court. Notwithstanding said objections and subject thereto, David F. Jasinski, Esq., Chad Giampino, Vice President of Operations at Hamilton Park, David Sussman, General Counsel at Hamilton Park, and Kevin Woodward, Administrator for Hamilton Park.

3. Describe in detail each and every fact or other form of the evidence supporting the first affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

RESPONSE: Respondents object to the extent the Interrogatory, is premature, calls for speculation as Respondents do not know all persons with knowledge of any facts related to the litigation at this juncture and the development of trial strategy is an ongoing process, requires Respondents to interpret the vagaries of the Petitions, requests attorney work product, seeks private information, and requests more than what is required by the rules of court. Notwithstanding said objection and subject thereto, Respondents have produced any and all documents and information to the Union pursuant to the Consent Order and in prior litigation including *SEIU 1199 v. Hamilton Park*, Southern District of New York, Dkt. No. 18-CV-3336. In addition, Respondent CMS is limited to housekeeping and has less than twenty-five employees contracted to provide services and Respondent CMS provided all requested information.

4. Describe in detail each and every fact or other form of the evidence supporting the second affirmative defense set forth by Respondents Hamilton Park and the CMS in its Answer to the Petition.

RESPONSE: Respondents object to the extent the Interrogatory, is premature, calls for speculation as Respondents do not know all persons with knowledge of any facts related to the litigation at this juncture and the development of trial strategy is an ongoing process,

requires Respondents to interpret the vagaries of the Petitions, requests attorney work product, seeks private information, and requests more than what is required by the rules of court. Notwithstanding said objection and subject thereto, Respondents have produced any and all documents and information to the Union pursuant to the Consent Order and in prior litigation including *SEIU 1199 v. Hamilton Park*, Southern District of New York, Dkt. No. 18-CV-3336. In addition, Respondent CMS is limited to housekeeping and has less than twenty-five employees contracted to provide services and Respondent CMS provided all requested information.

5. Describe in detail each and every fact or other form of the evidence supporting the third affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

RESPONSE: Respondents object to the extent the Interrogatory, is premature, calls for speculation as Respondents do not know all persons with knowledge of any facts related to the litigation at this juncture and the development of trial strategy is an ongoing process, requires Respondents to interpret the vagaries of the Petitions, requests attorney work product, seeks private information, and requests more than what is required by the rules of court. Notwithstanding said objection and subject thereto, Respondents have produced any and all documents and information to the Union pursuant to the Consent Order and in prior litigation including *SEIU 1199 v. Hamilton Park*, Southern District of New York, Dkt. No. 18-CV-3336. In addition, Respondent CMS is limited to housekeeping and has less than twenty-five employees contracted to provide services and Respondent CMS provided all requested information.

6. Describe in detail each and every fact or other form of the evidence supporting the fourth affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

RESPONSE: Respondents object to the extent the Interrogatory, is premature, calls for speculation as Respondents do not know all persons with knowledge of any facts related to the litigation at this juncture and the development of trial strategy is an ongoing process, requires Respondents to interpret the vagaries of the Petitions, requests attorney work product, seeks private information, and requests more than what is required by the rules of court. Notwithstanding said objection and subject thereto, Respondents have produced any and all documents and information to the Union pursuant to the Consent Order and in prior litigation including *SEIU 1199 v. Hamilton Park*, Southern District of New York, Dkt. No. 18-CV-3336. In addition, Respondent CMS is limited to housekeeping and has less than twenty-five employees contracted to provide services and Respondent CMS provided all requested information.

7. Identify each and every document or group of documents that support the first affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

RESPONSE: Respondents object to the extent the Interrogatory, is premature, calls for speculation as Respondents do not know all persons with knowledge of any facts related to the litigation at this juncture and the development of trial strategy is an ongoing process, requires Respondents to interpret the vagaries of the Petitions, requests attorney work product, seeks private information, and requests more than what is required by the rules of

court. Notwithstanding said objection and subject thereto, Respondents have produced any and all documents and information to the Union pursuant to the Consent Order and in prior litigation including *SEIU 1199 v. Hamilton Park*, Southern District of New York, Dkt. No. 18-CV-3336. In addition, Respondent CMS is limited to housekeeping and has less than twenty-five employees contracted to provide services and Respondent CMS provided all requested information.

8. Identify each and every document or group of documents that support the second affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

RESPONSE: Respondents object to the extent the Interrogatory, is premature, calls for speculation as Respondents do not know all persons with knowledge of any facts related to the litigation at this juncture and the development of trial strategy is an ongoing process, requires Respondents to interpret the vagaries of the Petitions, requests attorney work product, seeks private information, and requests more than what is required by the rules of court. Notwithstanding said objection and subject thereto, Respondents have produced any and all documents and information to the Union pursuant to the Consent Order and in prior litigation including *SEIU 1199 v. Hamilton Park*, Southern District of New York, Dkt. No. 18-CV-3336. In addition, Respondent CMS is limited to housekeeping and has less than twenty-five employees contracted to provide services and Respondent CMS provided all requested information.

9. Identify each and every document or group of documents that support the third affirmative set forth y Respondents Hamilton Park and CMS in its Answer to the Petition.

RESPONSE: Respondents object to the extent the Interrogatory, is premature, calls for speculation as Respondents do not know all persons with knowledge of any facts related to the litigation at this juncture and the development of trial strategy is an ongoing process, requires Respondents to interpret the vagaries of the Petitions, requests attorney work product, seeks private information, and requests more than what is required by the rules of court. Notwithstanding said objection and subject thereto, Respondents have produced any and all documents and information to the Union pursuant to the Consent Order and in prior litigation including *SEIU 1199 v. Hamilton Park*, Southern District of New York, Dkt. No. 18-CV-3336. In addition, Respondent CMS is limited to housekeeping and has less than twenty-five employees contracted to provide services and Respondent CMS provided all requested information.

10. Identify each and every document or group of documents that support the fourth affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

RESPONSE: Respondents object to the extent the Interrogatory, is premature, calls for speculation as Respondents do not know all persons with knowledge of any facts related to the litigation at this juncture and the development of trial strategy is an ongoing process, requires Respondents to interpret the vagaries of the Petitions, requests attorney work product, seeks private information, and requests more than what is required by the rules of court. Notwithstanding said objection and subject thereto, Respondents have produced any and all documents and information to the Union pursuant to the Consent Order and in prior

litigation including *SEIU 1199 v. Hamilton Park*, Southern District of New York, Dkt. No. 18-CV-3336. In addition, Respondent CMS is limited to housekeeping and has less than twenty-five employees contracted to provide services and Respondent CMS provided all requested information.

11. Identify each and every witness whose testimony supports the first affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

RESPONSE: Respondents object to the extent the Interrogatory, is premature, calls for speculation as Respondents do not know all persons with knowledge of any facts related to the litigation at this juncture and the development of trial strategy is an ongoing process, requires Respondents to interpret the vagaries of the Petitions, requests attorney work product, seeks private information, and requests more than what is required by the rules of court. Notwithstanding said objection and subject thereto, Brian Powers Vice President of Operations at CMS and Peter Gerges Director of Human Resources of CMS.

12. Identify each and every witness whose testimony supports the second affirmative defense by Respondents Hamilton Park and CMS in its Answer to the Petition.

RESPONSE: Respondents object to the extent the Interrogatory, is premature, calls for speculation as Respondents do not know all persons with knowledge of any facts related to the litigation at this juncture and the development of trial strategy is an ongoing process, requires Respondents to interpret the vagaries of the Petitions, requests attorney work product, seeks private information, and requests more than what is required by the rules of court. Notwithstanding said objection and subject thereto, Brian Powers Vice President of Operations at CMS and Peter Gerges Director of Human Resources of CMS.

13. Identify each and every witness whose testimony supports the third affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

RESPONSE: Respondents object to the extent the Interrogatory, is premature, calls for speculation as Respondents do not know all persons with knowledge of any facts related to the litigation at this juncture and the development of trial strategy is an ongoing process, requires Respondents to interpret the vagaries of the Petitions, requests attorney work product, seeks private information, and requests more than what is required by the rules of court. Notwithstanding said objection and subject thereto, Brian Powers Vice President of Operations at CMS and Peter Gerges Director of Human Resources of CMS.

14. Identify each and every witness whose testimony supports the fourth affirmative defense set forth by Respondents Hamilton Park and CMS in its Answer to the Petition.

RESPONSE: Respondents object to the extent the Interrogatory, is premature, calls for speculation as Respondents do not know all persons with knowledge of any facts related to the litigation at this juncture and the development of trial strategy is an ongoing process, requires Respondents to interpret the vagaries of the Petitions, requests attorney work product, seeks private information, and requests more than what is required by the rules of

court. Notwithstanding said objection and subject thereto, Brian Powers Vice President of Operations at CMS and Peter Gerges Director of Human Resources of CMS.

15. Detail all efforts made by Respondent Hamilton Park to comply with Paragraph II (a) of the Consent Order, including the actions taken, the identity of the individual who took each action, and the date of each action taken.

RESPONSE: Respondents object to the extent the Interrogatory, is premature, calls for speculation as Respondents do not know all persons with knowledge of any facts related to the litigation at this juncture and the development of trial strategy is an ongoing process, requires Respondents to interpret the vagaries of the Petitions, requests attorney work product, seeks private information, and requests more than what is required by the rules of court. Notwithstanding said objection and subject thereto, Respondents have produced any and all documents and information to the Union pursuant to the Consent Order and in prior litigation including *SEIU 1199 v. Hamilton Park*, Southern District of New York, Dkt. No. 18-CV-3336. In addition, Respondent CMS is limited to housekeeping and has less than twenty-five employees and as such the information was provided.

16. For Respondent Hamilton Park, state the name, address, telephone number and email address of each individual who was responsible for gathering, reviewing, or producing to the Union the documents required by Paragraph II(a) of the Consent Order.

RESPONSE: Respondents object to this interrogatory to the extent the request is harassing, is not proportional to the needs of the case and is not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding said objection and subject thereto, the individuals responsible are David F. Jasinski, Esq., Chad Giampino, Vice President of Operations at Hamilton Park, David Sussman, General Counsel at Alaris at Hamilton Park & Belgrove, Kevin Woodward, Administrator for Hamilton Park, Brian Powers Vice President of Operations at CMS and Peter Gerges Director of Human Resources of CMS they can be contacted through Jasinski, P.C.

17. Detail all efforts made by Respondents CMS to comply with Paragraph II(b) of the Consent Order, including the actions taken, the identity of the individual who took each action, and the date of each action.

RESPONSE: Respondents object to the extent the Interrogatory, is premature, calls for speculation as Respondents do not know all persons with knowledge of any facts related to the litigation at this juncture and the development of trial strategy is an ongoing process, requires Respondents to interpret the vagaries of the Petitions, requests attorney work product, seeks private information, and requests more than what is required by the rules of court. Notwithstanding said objection and subject thereto, Respondents have produced any and all documents and information to the Union pursuant to the Consent Order and in prior litigation including *SEIU 1199 v. Hamilton Park*, Southern District of New York, Dkt. No. 18-CV-3336. In addition, Respondent CMS is limited to housekeeping and has less than twenty-five employees and as such the information was provided. The Union has not requested to meet to negotiate a new Collective Bargaining Agreement.

18. For Respondent CMS, state the name, address, telephone number and address of each individual who was responsible for gathering, reviewing, or producing to the Union the documents required by Paragraph II(b) of the Consent Order.

RESPONSE: Respondents object to this interrogatory on the grounds that the interrogatory is vague, overbroad, and unduly burdensome. Notwithstanding said objections and subject thereto, Notwithstanding said objection and subject thereto, the individuals responsible are David F. Jasinski, Esq., Chad Giampino, Vice President of Operations at Hamilton Park, David Sussman, General Counsel at Alaris at Hamilton Park & Belgrove, Kevin Woodward, Administrator for Hamilton Park, Brian Powers Vice President of Operations at CMS and Peter Gerges Vice President of CMS they can be contacted through Jasinski, P.C.

19. For the search required by Paragraph II(c) of the Consent Order, describe what efforts were made to conduct the search, including what data sources were searched, what search terms were used, what methods were used to conduct the search, when the search occurred, and the parameters of the search.

RESPONSE: Respondents object to this interrogatory on the grounds that the interrogatory is vague, overbroad, and unduly burdensome. Notwithstanding said objections and subject thereto, Notwithstanding said objection and subject thereto, the parties, upon review of the information demand, reviewed the information which was previously provided: David F. Jasinski, Esq., Chad Giampino, Vice President of Operations at Hamilton Park, David Sussman, General Counsel at Hamilton Park Kevin Woodward, Administrator for Hamilton Park, Brian Powers Vice President of Operations at CMS and Peter Gerges Director of Human Resources of CMS they can be contacted through Jasinski, P.C.

20. State the name, address, telephone numbers and email address of each individual who has responsible for conducting the search required by Paragraph II(c) of the Consent Order.

RESPONSE: Respondents object to this interrogatory to the extent the request is harassing, is not proportional to the needs of the case and is not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding said objection and subject thereto, the individuals responsible are David F. Jasinski, Esq., Chad Giampino, Vice President of Operations at Hamilton Park, David Sussman, General Counsel at Alaris at Hamilton Park & Belgrove, Kevin Woodward, Administrator for Hamilton Park, Brian Powers Vice President of Operations at CMS and Peter Gerges Vice President of CMS they can be contacted through Jasinski, P.C.

21. Describe all additional documents provided to the Union pursuant to Paragraph II(d) of the Consent Order or, if applicable, certify under oath that no requests for information have been made by the Union since entry of the Consent Order.

Respondents object to this interrogatory to the extent the request is harassing, is not proportional to the needs of the case and is not reasonably calculated to lead to the discovery of admissible evidence.

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

NATIONAL LABOR RELATIONS BOARD,

Applicant,

v.

HAMILTON PARK HEALTH CARE
CENTER, CONFIDENCE MANAGEMENT
SYSTEMS AT HAMILTON PARK
HEALTH CARE CENTER,

Respondents,

JOHN DOES 1 THRU 5, FICTITIOUS
RESPONDENTS,

Additional Respondents in Contempt.

Case No. 20-3133

**RESPONDENTS' RESPONSES TO
APPLICANT'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS**

TO: National Labor Relations Board
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Washington, D.C., 20003

COUNSEL:

Respondents Hamilton Park Health Care Center, Confidence Management Systems at
Hamilton Park Health Care Center (hereinafter "Respondents"), by its attorneys, Jasinski, P.C.,

hereby responds to Applicant National Labor Relations Board's (hereinafter "Applicant or NLRB") First Set of Interrogatories pursuant to Fed. R. Civ. P. 33 subject to the comments and qualifications set forth below.

Dated: March 18, 2021

JASINSKI, P.C.
Attorneys for Respondents

By: s/ David F. Jasinski
David F. Jasinski, Esq.

COMMENTS, QUALIFICATIONS, RECITALS, AND GENERAL OBJECTIONS

Respondents have endeavored to respond to the NLRB's interrogatories on the basis of the best information now available to them. Information obtained by Respondents from the NLRB Co-Respondents, Third Party Respondents, and/or any other person through the future utilization of discovery procedures or otherwise may be relevant to the substance of the instant responses.

1. The responses set forth herein are made without waiving, and by expressly reserving, the following.

a. Respondents object to these interrogatories on the grounds that the Relevant Time Period is overbroad.

b. Respondents object to these interrogatories on the ground that they are vague, overbroad, and unduly burdensome.

c. Respondents right to object on the grounds of competency, privilege, relevancy, materiality or any other proper ground, and to the use of any response herein or any information disclosed pursuant hereto, for any purpose, in whole or part, in any subsequent step or proceeding in this action or in any other action.

d. Respondents right to object or further object on any and all grounds, at any time, to other requests or discovery procedures involving or relating to the subject matter of the requests responded to herein.

e. Respondents right to object, to the extent a request requires information concerning, or referring to, the originals and/or copies of documents that are no longer in Defendant's custody, control or possession, as said requirement is burdensome.

f. Respondents right to object to the extent a request seeks a document which concerns, relates to or otherwise reflects information which is or may be proprietary, confidential or violates privacy interests.

g. Respondents right at any time to revise, correct, add to, or clarify any of the responses herein.

h. Respondents right to object to the NLRB's interrogatories to the extent they seek information or documents protected from disclosure by the attorney-client privilege, the deliberative process privilege, or any other evidentiary privilege, or are otherwise protected from disclosure under an applicable law or the work product doctrine.

i. Respondents right to object to the NLRB's interrogatories on the grounds they seek information prepared or developed in anticipation of litigation or for trial, when the NLRB has not shown that it is unable, without undue hardship, to obtain the substantial equivalent of such information by other means.

j. Respondents right to object to the NLRB's requests to the extent they seek the discovery of information which is irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence.

k. Respondents right to object to the NLRB's interrogatories on the grounds that their wording is vague, broad, general, and all-inclusive and that the interrogatories do not permit a proper or reasonable response and are, therefore, unduly burdensome and oppressive.

l. Respondents right to object to any inference drawn from any portion of the discovery requests, or these responses to them, that the information requested or events referred to in the requests actually exist or occurred. The failure to object to each such inference in no way

constitutes an admission by Respondents that such information exists or that such events actually occurred.

m. Respondents right to seek a confidentiality agreement or protective order.

1. Respondents right to object to the extent a request is not in the proper form of an interrogatory.

2. Without waiving the above objections, Respondents will provide relevant, non-privileged information and documents currently available to it, subject to the requirements for supplementation of responses contained in the Rules of Court.

3. In the event Respondents inadvertently disclose information that may arguably be protected from discovery under the attorney-client privilege, the work product doctrine, or any other applicable privilege, such inadvertent disclosure does not constitute a waiver of any such privilege.

* * *

The foregoing comments, qualifications, recitals, and general objections are specifically repeated and incorporated by reference, in each of Respondents' responses to the NLRB's interrogatories. In addition, Respondents reserve the right to assert legal or factual contentions, including any applicable objections, which are not set forth in the instant responses.

**RESPONDENTS' ANSWERS TO THE NLRB'S FIRST REQUEST FOR THE
PRODUCTION OF DOCUMENTS**

1. For each affirmative defense asserted by Respondents in their Answer to Petition of the National Labor Relations Board, all documents which Respondents contend support such defense.

RESPONSE: Respondents object to this demand on the grounds that the Relevant Time Period is overbroad and the interrogatory is vague, overbroad, and unduly burdensome. Notwithstanding said objection and subject thereto, Respondents have produced any and all documents and information to the Union pursuant to the Consent Order and in prior litigation including *SEIU 1199 v. Hamilton Park*, Southern District of New York, Dkt. No. 18-CV-3336. Respondents are willing to reproduce the documents previously provided upon request via drop box link.

2. Documents reflecting all correspondence between and among Hamilton Park's officers, agents, representatives, and/or assigns regarding compliance or noncompliance with the Judgement.

RESPONSE: Respondents object to this demand on the grounds that the Relevant Time Period is overbroad and the interrogatory is vague, overbroad, and unduly burdensome. Notwithstanding said objection and subject thereto, all communications amongst Respondents regarding compliance or noncompliance with the Judgement were verbal, therefore there are no documents reflecting these communications.

3. Documents reflecting all correspondence between and among Hamilton Park's officers, agents, representatives, and/or assigns regarding compliance with the Consent Order.

RESPONSE: Respondents object to this demand on the grounds that the Relevant Time Period is overbroad and the interrogatory is vague, overbroad, and unduly burdensome. Notwithstanding said objection and subject thereto, all communications amongst Respondents regarding compliance were verbal, therefore there are no documents reflecting these communications.

4. Documents reflecting all correspondence between and among CMS's officers, representatives, and/or assigns regarding compliance or noncompliance with the Judgement.

RESPONSE: Respondents object to this demand on the grounds that the Relevant Time Period is overbroad and the interrogatory is vague, overbroad, and unduly burdensome. Notwithstanding said objection and subject thereto, all communications amongst Respondents regarding compliance or noncompliance with the Judgement were verbal, therefore there are no documents reflecting these communications.

5. Documents reflecting all correspondence between and among CMS's officers, representatives, and/or assigns regarding compliance with the Consent Order.

RESPONSE: Respondents object to this demand on the grounds that the Relevant Time Period is overbroad and the interrogatory is vague, overbroad, and unduly burdensome. Notwithstanding said objection and subject thereto, all communications amongst Respondents regarding compliance were verbal, therefore there are no documents reflecting these communications.

6. Documents reflecting all correspondence between and among Hamilton Park between and among CMS's officers, representatives, and/or assigns regarding compliance with the Consent Order.

RESPONSE: Respondents object to this demand on the grounds that the Relevant Time Period is overbroad and the interrogatory is vague, overbroad, and unduly burdensome. Notwithstanding said objection and subject thereto, all communications amongst Respondents regarding compliance were verbal, therefore there are no documents reflecting these communications.

7. Documents Demonstrating the steps taken to conduct the search required by Paragraph II (c) of the Consent Order, including any Electronically Stored Information (ESI) that would reflect searches conducted electronically.

RESPONSE: Respondents object to this demand on the grounds that the Relevant Time Period is overbroad and the interrogatory is vague, overbroad, and unduly burdensome. Notwithstanding said objection and subject thereto, Respondents have produced any and all documents and information to the Union pursuant to the Consent Order and in prior litigation including *SEIU 1199 v. Hamilton Park*, Southern District of New York, Dkt. No. 18-CV-3336. Respondents are willing to reproduce all responsive documents upon request to eliminate any misunderstanding and/or confusion via drop box link.

8. Documents reflecting instructions to create the affidavit required by Paragraph II (d) of the Consent Order.

RESPONSE: Respondents object to this demand on the grounds that the Relevant Time Period is overbroad and the interrogatory is vague, overbroad, and unduly burdensome. Notwithstanding said objection and subject thereto, Respondents have produced any and all documents and information to the Union pursuant to the Consent Order and in prior litigation including *SEIU 1199 v. Hamilton Park*, Southern District of New York, Dkt. No. 18-CV-3336. Respondents are willing to reproduce all responsive documents upon request to eliminate any misunderstanding and/or confusion via drop box link.

9. Documents reflecting the transmittal of such affidavit or any part thereof, except for actual, nonfinal drafts of such affidavit.

RESPONSE: Respondents object to this demand on the grounds that the Relevant Time Period is overbroad and the interrogatory is vague, overbroad, and unduly burdensome. Notwithstanding said objection and subject thereto, Respondents have produced any and all documents and information to the Union pursuant to the Consent Order and in prior litigation including *SEIU 1199 v. Hamilton Park*, Southern District of New York, Dkt. No. 18-CV-3336. Respondents are willing to reproduce all responsive documents upon request to eliminate any misunderstanding and/or confusion via drop box link.

10. All requests for information submitted by the Union to Respondents since entry of the Consent Order on June 8, 2020.

RESPONSE: Respondents object to this demand on the grounds that the Relevant Time Period is overbroad and the interrogatory is vague, overbroad, and unduly burdensome. Notwithstanding said objection and subject thereto, none.

11. All responses to requests for information submitted by the Union to Respondents since entry of the Consent Order on June 18, 2020.

RESPONSE: Respondents object to this demand on the grounds that the Relevant Time Period is overbroad and the interrogatory is vague, overbroad, and unduly burdensome. Notwithstanding said objection and subject thereto, Respondents have produced any and all documents and information to the Union pursuant to the Consent Order and in prior litigation including *SEIU 1199 v. Hamilton Park*, Southern District of New York, Dkt. No. 18-CV-3336. Respondents are willing to reproduce all responsive documents upon request to eliminate any misunderstanding and/or confusion via drop box link.

12. All correspondence between and among the Union and Respondents, including their agents, representatives, and/or assigns, related to requests for information submitted by the Union since entry of the Consent Order on June 18, 2020.

RESPONSE: Respondents object to this demand on the grounds that the Relevant Time Period is overbroad and the interrogatory is vague, overbroad, and unduly burdensome. Notwithstanding said objection and subject thereto, all communications amongst Respondents regarding compliance were verbal, therefore there are no documents reflecting these communications.

13. Minutes of Board of Director meetings and/or officer meetings for Hamilton Park concerning or which mention the Judgement and/or officer meeting for CMS.

RESPONSE: Respondents object to this demand on the grounds that the Relevant Time Period is overbroad and the interrogatory is vague, overbroad, and unduly burdensome. Notwithstanding said objection and subject thereto, none.

14. Minutes of Board of Director meetings and/or officer meetings for CMS concerning or which mention the Judgement and/or the Consent Order.

RESPONSE: Respondents object to this demand on the grounds that the Relevant Time Period is overbroad and the interrogatory is vague, overbroad, and unduly burdensome. Notwithstanding said objection and subject thereto, none.



NATIONAL LABOR RELATIONS BOARD
Office of the General Counsel

CONTEMPT, COMPLIANCE, & SPECIAL LITIGATION BRANCH
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April 7, 2021

VIA UPS AND ELECTRONIC MAIL

David F. Jasinski, Esq. (djasinski@jplawfirm.com)
Jasinski, P.C.
60 Park Pl., 8th Floor
Newark, NJ 07102

Re: *National Labor Relations Board v. Hamilton Park Health
Care Center, Confidence Management Systems, et al.*
Case No. 18-1207 (3d Cir. 2018)
Board Case Nos. 22-CA-161283, et al.

Dear Mr. Jasinski:

The National Labor Relations Board (“the Board”) has reviewed Respondents’ Responses to the Board’s First Set of Interrogatories (“Interrogatories”) and Respondents’ Responses to the Board’s First Request for Production of Documents (“Document Request”) in the above-referenced matter. However, these responses raised several issues which I wish to bring to your attention, in the hopes that this discovery dispute can be resolved amicably between the parties. For reference, this correspondence is written pursuant to Federal Rule of Civil Procedure 37, which requires a good faith effort to resolve any discovery disputes prior to the filing of any motion to compel discovery. Fed. R. Civ. P. 37(a). Of course, the Board hopes that the parties here can work out these discovery issues without requiring court intervention.

Respondents’ Responses are deficient in several respects. As an initial matter, Respondents’ Interrogatory Responses are legally insufficient under Federal Rule of Civil Procedure 33(b)(3). Rule 33(b)(3) requires that “[e]ach interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.” Fed. R. Civ. P. 33(b)(3) (emphasis added). The responses must also be signed by a party. Fed. R. Civ. P. 33(b)(1), (5). Respondents’ Interrogatory Responses were neither signed by a party nor verified under oath, leaving them facially deficient under the Federal Rules. The Board asks that you correct this deficiency by providing the interrogatory responses signed by each party’s representative under oath, and by forwarding corrected copies to this office.

The Board now addresses deficiencies in Respondents’ Interrogatory Responses, and will then address those in their Responses to the Board’s Document Request. For the sake of a more organized, readable format, the Board lists its objections to each interrogatory response separately below:

Interrogatory #1: Here, Respondents failed to provide either address or telephone information for the identified individuals. Additionally, no agents of Confidence Management Systems (“CMS”) were listed as having contributed to or assisted in responding to the interrogatories. Do Respondents mean to represent that no agents of CMS, a named party in this case, had anything to do with the formulation of Respondents’ interrogatory responses? Please clarify as to this point.

Interrogatory #2: The Board again objects on the basis that Respondents failed to provide either address or telephone information despite the clear language of the interrogatory. Further, the Board objects to the use of general, boilerplate objections, e.g., vagaries of the petition, as objections “to an interrogatory must be stated with specificity.” *See* Fed. R. Civ. P. 33(b)(4); *Harding v. Dana Transp., Inc.*, 914 F. Supp. 1084, 1102 (D.N.J. 1996) (“The federal courts have held time and again that general objections are not proper and without more are an insufficient basis for refusal to answer.”) (cleaned up). Finally, it defies reason to allege that Respondents do not know all persons with knowledge of facts related to Respondents’ own affirmative defenses. When pleading an affirmative defense, a party must demonstrate support for that defense. Accordingly, the Board objects to Respondents’ Response to Interrogatory #2 as nonresponsive.

Interrogatory #3: This response suffers from the same deficiencies as Interrogatory Response #2 regarding general objections and the requirement that parties demonstrate support for their affirmative defenses. Additionally, the documents referenced here, released in the course of litigation in *SEIU 1199 v. Hamilton Park*, are irrelevant to the request posed by the interrogatory. *SEIU 1199 v. Hamilton Park*, S.D.N.Y., No. 18-CV-3336, and all Respondents’ productions pursuant to that case predate the entry of the Consent Order. Finally, the size and scope of CMS’s operations, i.e. that it is limited to housekeeping and has less than twenty-five employees, is irrelevant to the Board’s interrogatory. Accordingly, the Board objects to Respondents’ Response to Interrogatory #3 as nonresponsive.

Interrogatory #4: This response suffers from the same deficiencies as Interrogatory Response #2 regarding general objections and the requirement that parties demonstrate support for their affirmative defenses. It also suffers from the same as deficiencies as Interrogatory Response #3, in that Respondents’ productions in *SEIU 1199 v. Hamilton Park* are irrelevant to the current proceedings and the size and scope of CMS’s operations is equally irrelevant. Accordingly, the Board objects to Respondents’ Response to Interrogatory #4 as nonresponsive.

Interrogatory #5: This response suffers from the same deficiencies as Interrogatory Response #2 regarding general objections and the requirement that parties must demonstrate support for their affirmative defenses. It also suffers from the same as deficiencies as Interrogatory Response #3, in that Respondents’ productions in *SEIU 1199 v. Hamilton Park* are irrelevant to the current proceedings and the size and scope of CMS’s operations is equally irrelevant. Accordingly, the Board objects to Respondents’ Response to Interrogatory #5 as nonresponsive.

Interrogatory #6: This response suffers from the same deficiencies as Interrogatory Response #2 regarding general objections and the requirement that parties must demonstrate support for their affirmative defenses. It also suffers from the same as deficiencies as Interrogatory Response #3, in that Respondents’ productions in *SEIU 1199 v. Hamilton Park* are irrelevant to the current proceedings and the size and scope of CMS’s operations is equally irrelevant. Accordingly, the Board objects to Respondents’ Response to Interrogatory #6 as nonresponsive.

Interrogatory #7: This response suffers from the same deficiencies as Interrogatory Response #2 regarding general objections and the requirement that parties must demonstrate support for their affirmative defenses. It also suffers from the same as deficiencies as Interrogatory Response #3, in that Respondents’ productions in *SEIU 1199 v. Hamilton Park* are irrelevant to the current proceedings and the size and scope of CMS’s operations is equally irrelevant. Accordingly, the Board objects to Respondents’ Response to Interrogatory #7 as nonresponsive.

Interrogatory #8: This response suffers from the same deficiencies as Interrogatory Response #2 regarding general objections and the requirement that parties must demonstrate support for their affirmative defenses. It also suffers from the same as deficiencies as Interrogatory Response #3, in that Respondents' productions in *SEIU 1199 v. Hamilton Park* are irrelevant to the current proceedings and the size and scope of CMS's operations is equally irrelevant. Accordingly, the Board objects to Respondents' Response to Interrogatory #8 as nonresponsive.

Interrogatory #9: This response suffers from the same deficiencies as Interrogatory Response #2 regarding general objections and the requirement that parties must demonstrate support for their affirmative defenses. It also suffers from the same as deficiencies as Interrogatory Response #3, in that Respondents' productions in *SEIU 1199 v. Hamilton Park* are irrelevant to the current proceedings and the size and scope of CMS's operations is equally irrelevant. Accordingly, the Board objects to Respondents' Response to Interrogatory #9 as nonresponsive.

Interrogatory #10: This response suffers from the same deficiencies as Interrogatory Response #2 regarding general objections and the requirement that parties must demonstrate support for their affirmative defenses. It also suffers from the same as deficiencies as Interrogatory Response #3, in that Respondents' productions in *SEIU 1199 v. Hamilton Park* are irrelevant to the current proceedings and the size and scope of CMS's operations is equally irrelevant. Accordingly, the Board objects to Respondents' Response to Interrogatory #10 as nonresponsive.

Interrogatory #11: This response suffers from the same deficiencies as Interrogatory Response #2 regarding general objections and the requirement that parties must demonstrate support for their affirmative defenses. Accordingly, the Board objects to Respondents' Response to Interrogatory #11 as nonresponsive. Additionally, Respondents did not list any witnesses for Hamilton Park Health Care Center ("Hamilton Park"), only CMS. Do Respondents mean to represent that no agents of Hamilton Park, a named party in this case, will present testimony supporting the first affirmative defense set forth by Respondents? Please clarify as to this point.

Interrogatory #12: This response suffers from the same deficiencies as Interrogatory Response #2 regarding general objections and the requirement that parties must demonstrate support for their affirmative defenses. Accordingly, the Board objects to Respondents' Response to Interrogatory #12 as nonresponsive. Additionally, Respondents did not list any witnesses for Hamilton Park, only CMS. Do Respondents mean to represent that no agents of Hamilton Park, a named party in this case, will present testimony supporting the first affirmative defense set forth by Respondents? Please clarify as to this point.

Interrogatory #13: This response suffers from the same deficiencies as Interrogatory Response #2 regarding general objections and the requirement that parties must demonstrate support for their affirmative defenses. Accordingly, the Board objects to Respondents' Response to Interrogatory #13 as nonresponsive. Additionally, Respondents did not list any witnesses for Hamilton Park, only CMS. Do Respondents mean to represent that no agents of Hamilton Park, a named party in this case, will present testimony supporting the first affirmative defense set forth by Respondents? Please clarify as to this point.

Interrogatory #14: This response suffers from the same deficiencies as Interrogatory Response #2 regarding general objections and the requirement that parties must demonstrate support for their affirmative defenses. Accordingly, the Board objects to Respondents' Response to Interrogatory #14 as nonresponsive. Additionally, Respondents did not list any witnesses for Hamilton Park, only CMS. Do

Respondents mean to represent that no agents of Hamilton Park, a named party in this case, will present testimony supporting the first affirmative defense set forth by Respondents? Please clarify as to this point.

Interrogatory #15: The Board again objects to Respondents' use of general objections, e.g. vagaries of the petitions, attorney work product, private information, that do not contain the specificity required by Federal Rule of Civil Procedure 33(b)(4). Additionally, the Board asserts that it is unreasonable to contend that, at this stage of litigation, Respondents do not know which persons have knowledge of "any facts related to the litigation." These deficiencies notwithstanding, the Board objects on the basis that this interrogatory response is, essentially, nonresponsive. The interrogatory requests a description of the efforts made by Hamilton Park to comply with Paragraph II(a) of the Consent Order, which requires production of documents pursuant to an enforced Board Order. As stated in the paragraphs above, any production of documents or information by Respondents pursuant to *SEIU 1199 v. Hamilton Park* is irrelevant, as those proceedings predate the Consent Order. Moreover, simply asserting that information has been produced does not serve as an adequate response to this interrogatory, which sought a description of the actions taken to produce such information, the identity of individuals who took each action, and the date on which each action was taken. As to the agents listed for CMS, Interrogatory #15 and Paragraph II(a) of the Consent Order only concern Hamilton Park. And even if the interrogatory did concern CMS, it is unclear to the Board how details about the size and scope of CMS's operations provide proof that CMS has produced the information required by the Consent Order.

Interrogatory #16: Despite the clear language of the interrogatory, Respondents failed to provide the addresses, telephone numbers or email addresses of the individuals identified in its response. Accordingly, the Board objects on the basis that Respondents' Response is only partially responsive. In addition, Respondents provide no explanation as to why this interrogatory is "harassing" or why Respondents assert that the interrogatory seeks information outside scope of discovery defined by Federal Rule of Civil Procedure 26. Finally, it is unclear why agents of CMS are listed in response to this interrogatory. Do Respondents mean to represent that agents of CMS were involved in the gathering, reviewing, and production of information to the Union pursuant to Paragraph II(a) of the Consent Order? If so, what was their involvement? Please clarify as to this point.

Interrogatory #17: Respondents' Response here suffers from the same deficiencies as Interrogatory Response #15 regarding general objections, the unreasonable assertion that Respondents do not know which persons have knowledge of facts contributing to Respondents' own defenses in this case, and why the size and scope of CMS's operations serves as proof that CMS produced the information required by the Consent Order. Additionally, it is again unclear to the Board why documents and information produced to the Union pursuant to *SEIU 1199 v. Hamilton Park* are relevant to the efforts were made by CMS to comply with the Consent Order, which postdates that case. Whether or not the Union has requested to meet to negotiate a new collective bargaining agreement is also irrelevant. Accordingly, the Board objects to Respondents' Response to Interrogatory #17 as nonresponsive.

Interrogatory #18: The Board again objects to the use of general, boilerplate objections; here, the assertion, absent any specificity, that the interrogatory is "vague, overbroad, and unduly burdensome." See Fed. R. Civ. P. 33(b)(4); *Joseph v. Harris Corp.*, 677 F.2d 985, 992 (3d Cir. 1982) ("[T]he mere statement by a party that the interrogatory was overly broad, burdensome, oppressive and irrelevant is not adequate to voice a successful objection to an interrogatory."). Additionally, Respondents failed here to include the addresses, telephone numbers, and email addresses of the individuals listed in response to this interrogatory. As to the agents listed for Hamilton Park, Interrogatory #18 and Paragraph II(b) of the Consent Order only concern CMS. Do Respondents mean to represent that agents of Hamilton Park

were involved in the gathering, reviewing, and production of information to the Union pursuant to Paragraph II(b) of the Consent Order? If so, what was their involvement? Please clarify as to this point.

Interrogatory #19: The Board again objects to the use of general, boilerplate objections such as “vague, overbroad, and unduly burdensome” in that they are not legally sufficient objections to an interrogatory. The Board also objects to Respondents’ Response to Interrogatory #19 as nonresponsive. There is no description of “efforts made to conduct the search,” “what data sources were searched,” search terms used, methods used to conduct the search, “when the search occurred,” or “the parameters of the search.” Rather, Respondents’ Response only provides obscure references to “the information which was previously provided” and “review of the information demand.” The only responsive portion of Respondents’ Response is a list of agents of both Hamilton Park and CMS, though there are no details as to what role these individuals played in the search required by Paragraph II(c) of the Consent Order.

Interrogatory #20: As with Interrogatory #16, Respondents provides no explanation as to why this interrogatory is “harassing” or why Respondents assert that the interrogatory seeks information outside the scope of discovery as defined by Federal Rule of Civil Procedure 26. Respondents also failed to provide the addresses, telephone numbers, and email addresses of the individuals listed in their Response. Accordingly, the Board objects to Respondents’ Response to Interrogatory #20 as nonresponsive.

Interrogatory #21: As with Interrogatory #16, Respondents provide no explanation as to why this interrogatory is “harassing” or why Respondents assert that the interrogatory seeks information outside the scope of discovery as defined by Federal Rule of Civil Procedure 26. Accordingly, the Board objects to Respondents’ Response to Interrogatory #21 as nonresponsive.

Below the Board addresses deficiencies identified in relation to Respondents’ Responses to Applicant’s First Request for Production of Documents. One deficiency present in almost all of Respondents’ Responses was a failure to conform to Federal Rule of Civil Procedure 34(b)(2)(C), which requires that an objection “must state whether any responsive materials are being withheld on the basis on that objection.” Fed. R. Civ. P. 34(b)(2)(C). Despite objecting to every Request, Respondents failed to identify the materials being withheld pursuant to those objections. Accordingly, the Board requests that, at a minimum, Respondents amend their responses to include what materials are being withheld pursuant to each objection. Aside from this objection, for the sake of readability, the Board will list its objections to each of Respondents’ Responses separately below:

Document Request #1: The Board objects to the use of general, boilerplate objections such as “vague, overbroad, and unduly burdensome.” See Fed. R. Civ. P. 34(b)(2)(B) (“For each item or category, the response must...state with specificity the grounds for objecting to the request, including the reasons.”); *Harding*, 914 F. Supp. at 1102 (objection to document request “must state with specificity the objection and how it relates to the particular request being opposed”). In particular, the Board objects to Respondents’ objection that the document request is “overbroad.” The “Relevant Time Period” is the time passed since the entry of the Consent Order, i.e., less than a year, and is thus in no way ‘overbroad.’ Additionally, the Board objects to Respondents’ apparent assertion that the reproduction of documents previously produced to the Union in proceedings in *SEIU 1199 v. Hamilton Park* would be responsive to Document Request #1. The instant case concerns Respondents’ compliance with the Consent Order, and the *SEIU 1199* proceedings predate the Consent Order. Thus, any documents provided to the Union pursuant that case are irrelevant. Moreover, the Board cannot discern what those documents would have to do with Respondents’ affirmative defenses or why and how they would support them. As stated

above, it is Respondents' responsibility to demonstrate support for those defenses. Accordingly, the Board objects to Respondents' Response to Document Request #1 as nonresponsive.

Document Request #7: The Board objects to this Response as nonresponsive. As explained above, documents produced pursuant to *SEIU 1199 v. Hamilton Park* are irrelevant to the instant case because those proceeding predate the Consent Order. Further, Document Request #7 asks for documents showing steps taken to conduct the search required by Paragraph II(c) of the Consent Order, specifically including Electronically Stored Information (ESI). Since such a search would necessarily occur after entry of the Consent Order, documents produced before the Consent Order cannot possibly be responsive.

Document Request #8: As with Document Request #1, the Board objects to the use of general, boilerplate objections and Respondents' apparent assertion that documents produced in *SEIU 1199 v. Hamilton Park* are relevant to this document request. Since this document request concerns an affidavit that Respondents were required to produce under the terms of the Consent Order, documents predating the Consent Order cannot possibly be responsive here.

Document Request #9: As with Document Request #1, the Board objects to the use of general, boilerplate objections and Respondents' apparent assertion that documents produced in *SEIU 1199 v. Hamilton Park* are relevant to this document request. Since this document request concerns an affidavit that Respondents were required to produce under the terms of the Consent Order, documents predating the Consent Order cannot possibly be responsive here.

Document Response #11: As with Document Request #1, the Board objects to the use of general, boilerplate objections and Respondents' apparent assertion that documents produced in *SEIU 1199 v. Hamilton Park* are relevant to this document request. Further, as with document Request #7, since this document request concerns information Respondents would have produced to the Union after the entry of the Consent Order, documents predating the Consent Order cannot possibly be responsive here.

The Board asks that Respondents amend and supplement their answers to the interrogatories objected to above and produce all documents responsive to the Board's document requests objected to above. We also wish to set up a conference with you to discuss the discovery disputes detailed in this letter and how the parties might work through them. Afterward, we can provide a status update to the Court in effort to keep things moving in this case. We propose that this conference be held **no later than April 14, 2021**, so please let us know your availability as soon as possible. Thank you in advance for your prompt attention to these matters.

Sincerely,

/s/ Molly G Sykes

Attorney

(202) 273-1747

Molly.Sykes@nrlrb.gov

JASINSKI

A PROFESSIONAL CORPORATION | COUNSELORS-AT-LAW

www.jplawfirm.com

April 28, 2021

Via Electronic Mail [Molly.Sykes@nlrb.gov]

Molly Sykes, Esq.
National Labor Relations Board
Contempt, Compliance & Special Litigation Branch
1015 Half Street SE
Fourth Floor
Washington, D.C. 20003

***Re: National Labor Relations Board v. Hamilton Park Health Care Center,
Confidence Management Systems, et al.
Case No.: 18-1207 (3d Cir. 2018); 22-CA-161283, et al.***

Dear Ms. Sykes:

Responsive to your letter dated April 7, 2021 and without waiving prior objections, we supplement our responses as follows:

Interrogatory #1:

David F. Jasinski, Esq., is authorized to accept service for the following individuals: Chad Giampino, David Sussman and Kevin Woodard. Any documents can be served, and will be accepted without objection by David F. Jasinski, Esq., Jasinski, P.C.; 60 Park Place, 8th floor; Newark, New Jersey 07102; 973-824-9700.

Brian Powers is Vice President of Confidence Management Services. Peter Gerges is Director of Human Resources. The address for CMS Management Systems is 1420 East Linden Avenue; Linden, New Jersey 07036; 908-912-2700.

Mr. Powers has knowledge of the facts surrounding the information CMS provided to the Union in this and other related litigations.

Interrogatory #2:

This case involved information request to the Union. Such information was provided by the Facility to the Union. Response addressed the fact that administrative individuals may have assisted in gathering information at the request of the identified individuals. The individuals identified were aware of the Union requests and information provided.

Molly Sykes, Esq.
April 28, 2021
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In addition, Brian Powers, CMS has knowledge of the allegations in the Petition and the affirmative defenses. These individuals can be contacted at the address provided in the response to Interrogatory #1.

Interrogatory #3:

The evidence supporting the affirmative defense was provided to the Union by the Facility and CMS which included all payroll registers for the requested period for all bargaining unit members which set forth names, positions, employee status (full-time, part-time) rates of pay, hours worked, overtime, PTO, holidays, vacations, yearly earnings for each employee, dues, contributions to the contractual funds (medical and pension). The Facility provided remittance reports, personnel practices, including employee handbook, benefit rider, summary plan description, operating contracts, work schedules and job descriptions. Notices were posted at the Facility. The \$30,000.00 payment was made to the Union in full satisfaction of compensatory damages.

Certain information requested by the Union does not exist, i.e, organizational charts for the Facility.

Interrogatory #4:

See response to Interrogatory #3 above.

Interrogatory #5:

See response to Interrogatory #3 above.

Interrogatory #6:

See response to Interrogatory #3 above.

Interrogatory #7:

See response to Interrogatory #3 above.

Interrogatory #8:

See response to Interrogatory #3 above.

Interrogatory #9:

See response to Interrogatory #3 above.

Interrogatory #10:

See response to Interrogatory #3 above.

Molly Sykes, Esq.

April 28, 2021

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Interrogatory #11:

See response to Interrogatory #1 above.

Interrogatory #12:

See response to Interrogatory #1 above.

Interrogatory #13:

See response to Interrogatory #1 above.

Interrogatory #14:

See response to Interrogatory #1 above.

Interrogatory #15:

See Certification of Chad Giampiano

Interrogatory #16:

See response to Interrogatory #1 above.

Interrogatory #17:

See Certification of Brian Powers attached hereto.

Interrogatory #18:

See response to Interrogatory #1 above.

Interrogatory #19:

This information can be obtained through depositions of individuals identified in response to Interrogatory #1 above.

Interrogatory #20:

See response to Interrogatory #1 above.

Interrogatory #21:

See response to Interrogatory #1 above.

Document Request #1:

The documents provided to the Union are responsive to the Union's demands and we assert are responsive. We have taken steps to ensure the information was complete and actions compliant with the Court Order, including full payment of the compensatory damages to the Union.

Document Request #7:

Steps taken to ensure information given to the Union entailed conversations between the attorneys for the Respondents and the client representatives. The actual search entailed the review of the documents provided to the Union in response to the requested information. These documents were manual payroll ledgers and other personnel documents.

Molly Sykes, Esq.
April 28, 2021
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Document Request #8:

That information is requesting privileged documents and information.

Document Request #9:

See response to Document Request #8 above.

Document Request #11:

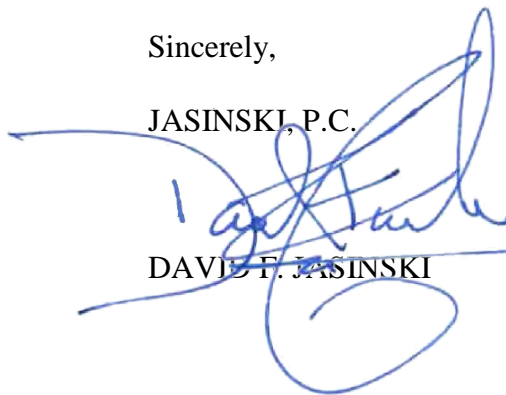
See response to Document Request #1 above.

We will be glad to meet and confer concerning these responses. As I have stated, we are not being obstructionist.

Sincerely,

JASINSKI, P.C.

DAVID F. JASINSKI



CERTIFICATION

BRIAN POWERS, being duly sworn depose and say:

1. I am Vice-President of Confidence Management Services. We are a small company that provides services for LTC facilities in New Jersey. In this capacity, I am responsible for the servicing of a number of accounts with healthcare facilities. Alaris Health at Hamilton Park is one such account.

2. We provide housekeeping services for Alaris Health at Hamilton Park. There are approximately fifteen housekeeping employees who provide services at this Facility. These employees are members of 1199 SEIU.

3. CMS has honored the terms of the CBA contract with the Facility, paid wages and made appropriate contributions to Health and Pension Funds pursuant to the CBA.

4. David Jasinski, an attorney that handles labor matters for Alaris Health at Hamilton Park, requested I review information that was requested by the Union. This information, which included payroll ledgers contained names of employees, positions, status, all hours of work, rates of pay, overtime and shifts. It is an all encompassing document.

5. Mr. Jasinski requested that I repeat the steps for information previously provided to ensure that we have provided all of the information in our possession. Some requested information does not exist. We are not in possession of the SPD of the Union's health plan or the pension plan. We make the contributions. I have never seen this information.

6. The requested information was embedded in the payroll ledgers and the information forwarded to the Union. For instance, reference to lists reflecting employees' use of paid time are not kept separate. They are contained in the ledgers. We complied with the contract which set forth the PTO. Other information included when employment ends is also obtained from the ledgers. The requested contracts were provided and CMS assumed the housekeeping department in the July, 2013.

7. Peter Gerges, who works with me, reviewed the requested information and provided it to the Union.

I hereby declare that the foregoing statements made by me are true to the best of my knowledge and belief. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.



Date: 4/28/21

BRIAN POWERS

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD,	:	
	:	
Applicant,	:	
	:	No. 20-3133
v.	:	
	:	
HAMILTON PARK HEALTH CARE CENTER,	:	
CONFIDENCE MANAGEMENT SYSTEMS AT	:	
HAMILTON PARK HEALTH CARE CENTER,	:	
	:	
Respondents,	:	
	:	
JOHN DOES 1 THRU 5, FICTITIOUS RESPONDENTS,	:	
	:	
Additional Respondents in Contempt.	:	
	:	

**NATIONAL LABOR RELATIONS BOARD’S BRIEF IN SUPPORT OF ITS
MOTION FOR AN ORDER COMPELLING DISCOVERY AND IMPOSING
SANCTIONS**

To the Honorable Timothy R. Rice
Magistrate Judge:

The National Labor Relations Board (the “Board”) submits this brief in support of its Motion for an Order Compelling Discovery and Imposing Sanctions (“Motion”). The facts and law in support of this Motion are set forth below.

Specifically, Hamilton Park Health Care Center (“Hamilton Park”) and Confidence Management Systems at Hamilton Park Health Care Center (“CMS”) (jointly, “Respondents”) have failed to cooperate in discovery by submitting incomplete responses to the Board’s First Set Of Interrogatories (“Interrogatories”) and the Board’s First Request for Production of Documents (“Request for Documents”). Despite the Board’s attempts to resolve the discovery dispute, Respondents have

either failed to return calls and emails or have promised cooperation that never materialized. Because Respondents and their counsel, David F. Jasinski, have caused unacceptable delay, the Board respectfully requests that this Court impose sanctions.

BACKGROUND

This contempt action originates with Respondents' failure to comply with a judgment issued by the Third Circuit Court of Appeals ("the Judgment") on May 7, 2018. The Judgment, among other things, requires that Respondents provide certain information requested by SEIU 1199, United Healthcare Workers East ("the Union") and cease and desist from failing to timely provide relevant, requested information to the Union in the future. On November 20, 2018, the Board filed a contempt petition with the Third Circuit alleging that Respondents were in violation of the Judgment. On June 18, 2020, the Third Circuit issued an Order entering a Consent Order between the parties.

The Consent Order was specifically drafted to articulate precise, tangible steps that Respondents were required to undertake in order to complete their compliance with the Judgment. To that end, it required that Respondents take certain affirmative actions, including: 1) provide the Union with certain information originally requested on June 23, 2015; 2) conduct a diligent and comprehensive search for each category of documents in the June 23, 2015 request; 3) if the search produced no documents in any given category, provide a sworn statement that detailed the steps taken to conduct the search, made by an individual who personally inspected the relevant files; and 4) provide a sworn statement with the

Clerk of the Third Circuit, with a copy to the Board, showing what steps were taken to comply with the Consent Order. The Consent Order also required that Respondents cease and desist from failing to timely provide relevant, requested information to the Union in the future, or in any like or related manner violating the National Labor Relations Act (“the Act”).

On October 19, 2020, the Board filed a contempt petition (“the Petition”) with the Third Circuit alleging that Respondents failed to abide by the Consent Order in numerous respects. On January 20, 2021, the Third Circuit issued an order appointing the Honorable Magistrate Judge Thomas R. Rice as special master and investing the special master with certain authority as set forth in the order. By order dated January 22, 2021, this Court established a discovery schedule for the instant matter.

The Board served Respondents with its Interrogatories and its Request for Documents on February 11 and 12, respectively. *See* Exhibits A and B to the Board’s Motion. On March 18, 2021, Respondents provided their responses to both the Board’s Interrogatories and Request for Documents. *See* Exhibits C and D to the Board’s Motion. These responses contained a myriad of deficiencies, including asserting boilerplate objections, inexplicably conflating the two Respondents, and even more inexplicably asserting that it complied with the Consent Order by taking actions that occurred *before* the Consent Order even existed. On April 7, 2021, the Board sent Mr. Jasinski a letter pursuant to Federal Rule of Civil Procedure 37(a)

setting forth these deficiencies and requesting that the parties meet and confer as soon as possible. *See* Exhibit E to the Board's Motion.

At first, Mr. Jasinski did not respond to either the April 7 letter or a follow-up email on April 12. But, while discussing another case with counsel for the Board, Mr. Jasinski agreed to meet and confer with the Board on these discovery issues on April 19. On April 15, 2021, the Board sent a letter advising the Court of the status of discovery, the discovery disputes between the parties, and the likely need to postpone the June trial date. On April 19, 2021, the Court scheduled a telephonic conference for that Wednesday to discuss contempt proceedings for discovery abuse by Respondents. When the Board attempted to call Mr. Jasinski for the meet and confer that same day, Mr. Jasinski did not respond.

Following the conference on April 22, 2021, the Court issued an Order requiring, in relevant part, that Respondents provide supplemental discovery responses by April 28, 2021 that would address the deficiencies identified by the Board in its April 7 letter. On April 28, 2021, Respondents provided their supplemental responses: a five-page document drafted by Mr. Jasinski and a certification signed by Brian Powers, Vice President of CMS.¹ *See* Exhibit F to the Board's Motion. Because that supplemental response materially fails to correct the deficiencies identified by the Board and this Court, the Board now moves to compel responses to its discovery requests and for sanctions.

¹ The response to Interrogatory #15 stated "[s]ee Certification of Chad Giampiano." However, no such certification was included in the supplemental responses.

ARGUMENT

I. Respondents' Supplemental Responses to the Board's Interrogatories Fail to Comply with Federal Rule of Civil Procedure 33

Federal Rule of Civil Procedure 33(b) requires that interrogatories may be answered by “any officer or agent” of a corporation and that “[e]ach interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.” Fed. R. Civ. P. 33(b)(1), (3). The officer or agent “who makes the answers must sign them, and the attorney who objects must sign any objections.” *Id.* at (5). If any objections are made, their grounds “must be stated with specificity.” *Id.* at (4).

Responses to interrogatories “should be in such form that they may be used [in] a trial.”² Interrogatory responses that are not signed under oath by the person who made them “are not valid.”³ Responses themselves must be “complete, explicit and responsive,”⁴ as opposed to “vague, evasive, confusing, and cryptic.”⁵ An evasive or incomplete interrogatory response “must be treated as a failure to disclose, answer, or respond.”⁶ Similarly, a party “cannot answer one interrogatory simply by

² *Dipietro v. Jefferson Bank*, 144 F.R.D. 279, 282 (E.D. Pa. 1992) (quoting *Int'l Mining Co., Inc. v. Allen & Co., Inc.*, 567 F. Supp. 777, 787 (S.D.N.Y. 1983)).

³ *In re Asbestos Prod. Liab. Litig. (No. VI)*, No. 08-90234, 2012 WL 5839023, at *7 (E.D. Pa. Nov. 16, 2012); see *Bracy v. Grenoble*, 494 F.2d 566, 570 at n.7 (3d Cir. 1974) (finding that district court improperly relied upon responses to interrogatories that were only signed by the defendant's attorney and not made under oath).

⁴ *Milner v. Nat'l Sch. of Health Tech.*, 73 F.R.D. 628, 632 (E.D. Pa. 1977).

⁵ *Hansel v. Shell Oil Corp.*, 169 F.R.D. 303, 304 (E.D. Pa. 1996).

⁶ Fed. R. Civ. P. 37(a)(4).

referring . . . to another equally unresponsive answer.”⁷ Rather, answers to interrogatories “should be complete in and of themselves.”⁸

Here, Respondents have failed to comply with the requirements of Federal Rule of Civil Procedure 33. Respondents’ supplemental responses consist of a few short paragraphs, an instruction that the information requested by the Board can be obtained through depositions, and a “Certification” signed by Brian Powers, Vice President of CMS. Aside from the “Certification,” the supplemental responses are neither signed by a party nor verified under oath (nor, for that matter, do they cure the failure of Respondent’s original responses to contain such a verification).⁹ In sum, Respondents’ answers to the Board’s Interrogatories fall far short of being “complete, explicit, and responsive.”

Interrogatory #2, for example, requests the contact information of each individual with knowledge of the allegations in the Petition and Respondents’ affirmative defenses. Respondents provided the following response:

The case involved information request to the Union. Such information was provided by the Facility to the Union. Response addressed the fact that administrative individuals may have assisted in gathering information at the request of identified individuals. The individuals identified were aware of the Union requests and information provided.

In addition, Brian Powers, CMS has knowledge of the allegations in the Petition and the affirmative defenses. These individuals can be contacted at the address provided in the response to Interrogatory #1.

⁷ *Martin v. Easton Pub. Co.*, 85 F.R.D. 312, 315 (E.D. Pa. 1980).

⁸ *Dipietro*, 144 F.R.D. at 282.

⁹ *See* Fed. R. Civ. P. 33(b)(5).

Grammatical issues aside, this response can hardly be described as fully responsive to the Board's interrogatory. The response does not identify specific dates, what information was requested by the Union, or what information was provided by Respondents. The use of vague, cryptic terms, such as 'the Facility,' leaves the Board guessing as to whether the information was provided by Hamilton Park, CMS, or both. The response alludes to the very type of information that might benefit the Board in discovery – the identities of the “various administrative individuals” who “may have assisted in gathering information” – but does not give it. Instead, Respondents direct the Board to five individuals who were “aware of the Union requests and information provided” and whom Respondents would evidently prefer the Board depose in place of those with direct knowledge.

Respondent's supplemental response to Interrogatory #3 suffers from similar flaws. The interrogatory asked for a detailed description of every fact or form of evidence supporting Respondents' First Affirmative Defense, namely: “The Orders cannot serve as a basis for contempt.” Respondents answered as follows:

The evidence supporting the affirmative defense was provided to the Union by the Facility and CMS which included all payroll registers for the requested. For all bargaining unit members which set forth names, positions, employee status (full-time, part-time) rates of pay, hours worked, overtime, PTO, holidays, vacations, yearly earnings for each employee, dues, reports, personnel practices, including employee handbook, benefit rider, summary plan description, operating contracts, work schedules and job descriptions. Notices were posted at the Facility. The \$30,000.00 payment was made to the Union in full satisfaction of compensatory damages. Certain information requested by the Union does not exist, i.e., organizational charts for the Facility.

It is unclear how a description of information allegedly provided to the Union and nonspecific assertions of compliance with portions of the Consent Order relates

to Respondents' First Affirmative Defense. The response also omits vital details, such as specific dates on which the information was provided. Information provided before the entry of the Consent Order, by its very nature, would not satisfy that order.

Despite these glaring flaws in these responses, Respondents answered the majority of the Board's Interrogatories by referring back to them. In response to Interrogatories #4 through #10, Respondents' supplemental response simply says, "See response to Interrogatory #3 above." But even apart from the fact that Interrogatories #4 through #10 obviously asked different questions pertaining to different aspects of the case than Interrogatory #3, referring back to an "equally unresponsive" interrogatory response does not satisfy a party's obligations under Federal Rule of Civil Procedure 33.

Similarly, Respondents answered Interrogatories #11 through #14, #16, #18, #20 and #21 by directing the Board back to the supplemental response to Interrogatory #1. Interrogatory #1 requested the "name, address, and telephone number of each and every individual who contributed to or assisted in responding to these interrogatories." For this interrogatory, Respondents provided an adequate response, listing agents of both Hamilton Park and CMS, their attorney Mr. Jasinski, and their contact information. However, Interrogatories #11 through #14, #16, #18, #20 and #21 asked for information about certain individuals in particular contexts and in relation to affirmative actions required of the Respondents under the Consent Order.

For example, Interrogatory #16 requests the identity and contact information for each individual at Hamilton Park “who was responsible for gathering, reviewing, or producing to the Union the documents required by Paragraph II(a) of the Consent Order.” Paragraph II(a) concerns Hamilton Park’s failure to provide the Union with requested information in accordance with the Judgment. Respondents’ initial response to Interrogatory #16 listed agents of CMS. Naturally, the Board objected in its April 7 letter, questioning why agents of CMS would be involved in complying with a part of the Consent Order that only concerned Hamilton Park and asked Respondents to clarify as to this point. By referring back to their response to Interrogatory #1, Respondents ignored the Board’s prior objection and again provided a deficient response to Interrogatory #16.

Respondents’ only other substantive responses were to Interrogatories #15, #17, and #19. Interrogatories #15 and #17 asked each Respondent to “[d]etail all efforts made...to comply with [Paragraphs II(a) and II(b)] of the Consent Order, including the actions taken, the identity of the individual who took each action, and the date of each action taken.” [Exhibit A, p.9-10]. Paragraphs II(a) and (b) of the Consent Order, in turn, required that Hamilton Park and CMS, respectively, provide information to the Union as required by the Judgment.

Respondents responded by referring to two “Certifications” by Chad Giampino and Brian Powers. As previously noted, no certification by Mr. Giampino was actually attached to Respondents’ supplemental responses. The response *may* be referring to a certification filed by the same individual in an entirely separate

case dealing with an entirely separate Third Circuit judgment against Respondent Hamilton Park. At any rate, it is not the Board's responsibility to parse through correspondence in other cases in an attempt to divine what Respondents are saying in response to its interrogatories. What part of Mr. Giampino's certification is responsive? How is it responsive? The Board is left guessing.

Mr. Powers's Certification is an improvement insofar as it at least constitutes testimony from a responsible individual. But the certification lacks any details that would make it sufficiently responsive. It names Mr. Powers and Peter Gerges as having done *something* at Mr. Jasinski's urging, but no description of what that something is aside from an allusion to repeating "the steps for information previously provided" to the Union. Of course, the Board has no knowledge of what steps CMS allegedly repeated. Nor does Powers's declaration explain *when* the searches were conducted, *what* (if anything) was searched other than payroll ledgers, *where* the search was conducted, or *how* it was conducted. The Board is left with no more information, for purposes of conducting depositions and eliciting useful testimony at trial, than it did before it propounded the interrogatory.

But then, Respondents seem to prefer it that way. In response to Interrogatory #19, Respondents suggest that information responsive to the interrogatory "could be obtained through depositions of the individuals identified in response to Interrogatory #1." This response is almost breathtakingly truculent. Respondents decline to fulfill their obligations in regard to written discovery and, instead, want to force the Board to perform their factual research for them by way

of a double-blind fishing expedition during depositions. The legal bottom line here is simple: the Board is not obligated to conduct discovery in the order Respondents would prefer. It is entitled to obtain responses to its interrogatories before beginning depositions.¹⁰

Respondents' brazen defiance of Federal Rule of Civil Procedure 33 shows a contempt for the Federal Rules and for this Court, plain and simple.

II. Respondents' Supplemental Responses to the Board's Request for Documents Fail to Comply with Federal Rule of Civil Procedure 34

Regrettably, Respondents' compliance with Federal Rule of Civil Procedure 34 fares no better under scrutiny. Federal Rule of Civil Procedure 34 "requires that a party served with a document request either produce the requested documents or state a specific objection for each item or category objected to."¹¹ Such objections must "state with specificity the grounds for objecting to the request, including the reasons" and "state whether any responsive materials are being withheld on the basis of that objection."¹² The onus is on the party resisting discovery to object and to do so with specificity.¹³ Even then, the mere fact that a request for documents is "objectionable in part is not an excuse for producing nothing."¹⁴

¹⁰ Fed. R. Civ. P. 26(d)(3)(A) ("methods of discovery may be used in any sequence").

¹¹ *Harcum v. Leblanc*, 268 F.R.D. 207, 209-10 (E.D. Pa. 2010); Fed. R. Civ. P. 34(b)(2)(B).

¹² Fed. R. Civ. P. 34(b)(2)(B), (C).

¹³ *Momah v. Albert Einstein Med. Ctr.*, 164 F.R.D. 412, 417 (E.D. Pa. 1996).

¹⁴ *Martin v. Brown*, 151 F.R.D. 580, 594 (W.D. Pa. 1993); *see also Murray v. Gemplus Int'l, SA*, No. CIV.A. 02-CV-9023, 2003 WL 1949637, at *4 (E.D. Pa. Apr. 23, 2003).

Respondents' supplemental response to the Board's Request for Documents, as with its response to the Board's interrogatories, falls woefully short of meeting the requirements under the Federal Rules. Respondents had two choices: to either produce or allow inspection of documents or to assert specific objections and identify the materials being withheld pursuant to those objections. But Respondents here chose to produce *no* documents in response to the vast majority of requests and provide a single general objection for the remaining two. Such a response is not only contrary to Federal Rule of Civil Procedure 34 but also displays a complete lack of respect for this Court's April 22 Order.

In the place of documents, Respondents have instead produced unsworn statements alleging that they have taken various actions pursuant to the Consent Order. For instance, the Board's Request for Documents #1 asked for all documents supporting each of Respondents' affirmative defenses. Instead, Respondents stated that "[t]he documents provided to the Union are responsive to the Union's demands" and that Respondents took "actions compliant with the Court Order, including full payment of the compensatory damages to the Union." Respondents referred back to this deficient response in their response to Document Request #11, even though #11 concerned requests for information made by the Union *after* the Consent Order was entered. Respondents' answer to Document Request #7, which concerned the search required by Paragraph II(c) of the Consent Order, was equally nonresponsive. Respondents cannot both fail to object to the production of documents *and* produce no documents whatsoever.

The only response that can even be interpreted as an objection is unintelligible and lacks any of the specificity required by Rule 34. In response to Document Requests #8 and #9, Respondents simply asserted “[t]hat information is requesting privileged documents and information.” Even if one were to construe this statement as an objection, Respondents do not point to a specific evidentiary privilege nor do they describe the materials being withheld pursuant to that privilege. Such a nondescript objection is “not an excuse for producing nothing.”¹⁵

III. Respondents’ Egregious Discovery Abuses Warrant Sanctions under Federal Rule of Civil Procedure 37

Federal Rule of Civil Procedure 37 sets forth both the procedure for a party to motion a court for an order compelling discovery and sanctions for a party who fails to adhere to the Federal Rules regarding discovery. Rule 37(a)(3)(B)(iii) and (iv), respectively, allow a party to seek an order compelling an answer if a party fails to answer an interrogatory submitted pursuant to Rule 33 or compelling production if a party fails to respond that inspection will be permitted.¹⁶ An evasive or incomplete disclosure, answer, or response must be treated as a failure to respond.¹⁷ District courts have the “discretionary authority to determine appropriate sanctions for a particular case and to impose severe sanctions in cases it deems appropriate.”¹⁸

¹⁵ *Martin*, 151 F.R.D. at 594.

¹⁶ *See* Fed. R. Civ. P. 37(a)(3)(B)(iii), (iv).

¹⁷ *See* Fed. R. Civ. P. 37(a)(4).

¹⁸ *Coastal Mart, Inc. v. Johnson Auto Repair, Inc.*, 196 F.R.D. 30, 33 (E.D. Pa. 2000) (citing *Nat’l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639 (1976)).

Here, Respondents hit the trifecta of sanctionable behavior under Rule 37. They have failed to comply with discovery under Rule 37(a), warranting sanctions pursuant to 37(a)(5). They have disobeyed this Court's April 22 Order requiring that they cure the deficiencies in their initial discovery responses, warranting sanctions pursuant to 37(b). And they have failed to properly supplement these initial discovery responses despite a court order instructing them to do so, warranting sanctions under 37(c). Accordingly, the Board asks that this Court enter an order 1) requiring that Respondents pay reasonable expenses, including attorneys' fees; 2) striking Respondents' affirmative defenses; and 3) holding Respondents in contempt to ensure Respondents provide complete and explicit responses to the Board's Interrogatories and produce all documents responsive to the Board's Request for Documents, subject only to valid, substantiated objections.

a. This Court Should Order Respondents to Pay to the Board Reasonable Expenses, Including Attorneys' Fees.

Rule 37(a)(1) states that a party may move for an order compelling discovery.¹⁹ Rule 37(a)(5) mandates that, if a motion to compel discovery is granted, the granting court must, after giving opportunity to be heard, require the party who failed to comply with the rules of discovery to pay the movant's reasonable expenses. The only exceptions lie where the movant failed to attempt in good faith to obtain discovery absent court action, the non-movant's failure to comply was justified, or other circumstances would make an award of expenses unjust.²⁰

¹⁹ See Fed. R. Civ. P. 37(a)(1).

²⁰ See Fed. R. Civ. P. 37(a)(5)(A)(i-iii).

Here, should the Court grant the Board's Motion, it must order Respondents to reimburse the Board for its reasonable expenses, including attorneys' fees, because none of the exceptions to sanctions under Rule 37(a)(5) apply here. The Board filed its Motion only after attempting on multiple occasions to obtain discovery absent court intervention. Respondents have not given any substantial justification for their failure to adhere to the requirements of the Federal Rules of Civil Procedure 33 and 34 or their failure to obey this Court's April 22 Order. Other circumstances, to the Board's knowledge, do not exist that would make an award of expenses unjust here. Respondents have had every opportunity to cooperate with the Board's discovery requests and have repeatedly failed to do so.

Alternatively, this Court should order payment of the Board's reasonable expenses, including attorneys' fees, under Federal Rule of Civil Procedure 37(b)(2)(C) or (c)(1)(A). Here, Respondents have violated this Court's April 22 Order requiring that they supplement their initial discovery responses to cure the deficiencies identified by the Board in its April 7 letter. Respondents have no substantial justification for failing to abide by this Court's April 22 Order, given its clear directive. To the Board's knowledge, there are no other circumstances which could justify Respondents' violation of this Court's Order.

In failing to obey this Court's Order, Respondents also failed to supplement an earlier response as ordered by the Court.²¹ Accordingly, Rule of Civil Procedure 37(c)(1)(A) applies here, providing another basis for the Court to order payment of

²¹ See Fed. R. Civ. P. 26(e)(1)(B).

reasonable expenses, including attorneys' fees. As stated above, Respondents cannot substantially justify their failure to supplement their initial discovery responses to cure deficiencies therein. Nor was such a failure harmless, as the Board cannot proceed with its case against Respondents so long as Respondents withhold vital information and documents.

b. This Court Should Strike Respondents' Affirmative Defenses as an Appropriate Sanction Under Rule 37(b)(2)(A) or, Alternatively, 37(c)(1)(C).

Under Federal Rule of Civil Procedure 37(b)(2)(A), and as incorporated in 37(c)(1)(C), a district court may "strike pleadings in whole or in part" as a sanction where a party fails to comply with a court order to supplement its discovery responses. However, a district court's broad discovery to impose discovery sanctions has limitations: first, the sanction must be "just," and second, the sanction must be specifically related to the particular discovery violation.²² These limitations "are rooted in notions of due process," with the first representing the general due process restrictions on a district court's discretion and the second requiring that "a 'specific nexus' exist between the sanction imposed and the underlying discovery violations."²³

Here, striking Respondents' affirmative defenses is both just and a specific nexus exists between this sanction and Respondents' discovery violations. First, striking Respondents' affirmative defenses is manifestly just here. Respondents

²² See *Harris v. City of Philadelphia*, 47 F.3d 1311, 1331 (3d Cir. 1995) (quoting *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 707 (1982)).

²³ *Clientron Corp. v. Devon IT, Inc.*, 894 F.3d. 568, 581 (3d Cir. 2018) (quoting *Insurance Corp. of Ireland*, 456 U.S. at 707).

bear the evidentiary obligation of supporting their affirmative defenses to the Board's Petition. Yet, even with ample opportunity to do so, Respondents have not provided a scintilla of evidence or reasoning supporting these defenses. Even after this Court specifically threatened Respondents with discovery sanctions, Respondents supplemented their initial deficient responses with equally deficient responses. Respondents have been given notice and afforded due process. This Court should impose "just" consequences for Respondents' malfeasance by striking the affirmative defenses they failed to support.

Such a sanction would also have a specific nexus to Respondents' discovery abuses. The Board sought discovery regarding affirmative defenses voluntarily set forth by Respondents. Having propounded these affirmatives defenses, Respondents "did not have the option of blocking the reasonable attempt" by the Board to gather evidence that could rebut them.²⁴

c. This Court Should Hold Respondents in Contempt as a Necessary Measure to Compel Discovery Responses.

Federal Rule of Civil Procedure 37(b)(2)(A)(vii) allows "treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination." Accordingly, district courts have the discretion to hold parties in contempt to coerce compliance with the terms of their orders.²⁵ A party moving for contempt of court must prove three elements by clear and convincing evidence: "(1) that a valid order of the court existed; (2) that the defendants had knowledge of

²⁴ *Insurance Corp. of Ireland*, 456 U.S. at 709.

²⁵ *See Gen. Ins. Co. Am. v. E. Consol. Utils., Inc.*, 126 F.3d 215, 219-20 (3d. Cir. 1997).

the order; and (3) that the defendants disobeyed the order.”²⁶ Upon such proof, the burden shifts to the contemnor to show that compliance with the court order is impossible.²⁷ If a contemnor alleges substantial compliance with a court order, the contemnor “must demonstrate reasonable diligence and energy in attempting to accomplish what was ordered.”²⁸

Here, the Court’s April 22 Order was valid, Respondents had knowledge of it, and yet Respondents disobeyed it. Respondents cannot claim substantial compliance, as they have failed demonstrate reasonable diligence and energy in their attempt to obey the Court’s April 22 Order. That Order required Respondents to supplement their initial discovery responses to correct the deficiencies detailed in the Board’s April 7 letter. But Respondents’ supplemental responses suffer from many of the same deficiencies as their initial responses. Their interrogatory responses are largely nonsensical and, in at least one instance, brazenly refuse compliance with their obligations under the Federal Rules. And as with the initial responses, Respondents again failed to verify their responses to each interrogatory under oath. Finally, Respondents again failed to produce *any* documents, despite not making any valid objections or describing materials being withheld pursuant to a valid objection. These actions by Respondents make it abundantly clear that they

²⁶ *Roe v. Operation Rescue*, 54 F.3d 133, 137 (3d Cir. 1995) (quotation omitted).

²⁷ *United States v. Rylander*, 460 U.S. 752, 757 (1983); *Maggio v. Zeitz*, 333 U.S. 56, 75-76 (1948).

²⁸ *Halderman v. Pennhurst State Sch. & Hosp.*, 154 F.R.D. 594, 608 (E.D. Pa. 1994) (quoting *Merch. & Evans, Inc. v. Roosevelt Bldg. Prod. Co.*, No. CIV. A. 90-7973, 1991 WL 261654, at *1 (E.D. Pa. Dec. 6, 1991)).

will not obey this Court's Order or refrain of discovery abuses absent the coercive effect of a finding of contempt under Federal Rule of Civil Procedure 37(b)(2)(A)(vii).

CONCLUSION

The Federal Rules of Civil Procedure “are more than mere procedural guidelines to be consulted at the pleasure of a party to a federal suit.”²⁹ They are “carefully drafted and specific in their terms in order that they secure the just, speedy, and inexpensive” resolution of cases.³⁰ Here, Respondents have treated the Federal Rules of Civil Procedure as optional, and in doing so, prevented the just, speedy, and inexpensive resolution of this case. Accordingly, the Court should grant the Board's Motion and impose the requested sanctions.

²⁹ *Philpot v. Philco-Ford Corp.*, 63 F.R.D. 672, 675 (E.D. Pa. 1974).

³⁰ *Id.*

Respectfully submitted,

NATIONAL LABOR RELATIONS BOARD

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Dated at Washington, DC
this 19th day of May, 2021

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD,	:	
	:	
Applicant,	:	
	:	No. 20-3133
v.	:	
	:	
HAMILTON PARK HEALTH CARE CENTER,	:	
CONFIDENCE MANAGEMENT SYSTEMS AT	:	
HAMILTON PARK HEALTH CARE CENTER,	:	
	:	
Respondents,	:	
	:	
JOHN DOES 1 THRU 5, FICTITIOUS RESPONDENTS,	:	
	:	
Additional Respondents in Contempt.	:	
	:	

CERTIFICATION BY COUNSEL OF ATTEMPT
TO RESOLVE DISCOVERY DISPUTE

I, Molly Sykes, hereby certify that I have made a good faith personal effort to confer with Respondents to obtain discovery without the intervention of this Court and that this effort was unsuccessful. I also hereby certify that the statements contained in the National Labor Relations Board's Motion for an Order Compelling Discovery and Imposing Sanctions are true and correct.

Dated at Washington, DC
this 19th day of May, 2021

s/ Molly Gallagher Sykes
MOLLY GALLAGHER SYKES
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	:	
Respondents,	:	
	:	
JOHN DOES 1 THRU 5, FICTITIOUS RESPONDENTS,	:	
	:	
Additional Respondents in Contempt.	:	
	:	

(PROPOSED) ORDER COMPELLING DISCOVERY
AND IMPOSING SANCTIONS

This Court having reviewed the National Labor Relations Board's Motion for an Order Compelling Discovery and Imposing Sanctions, supporting papers, any response(s) thereto, and any rebuttals, and good cause having been shown, **it is ORDERED that the Motion is granted.**

IT IS FURTHER ORDERED that within 14 days of the date of issuance of this Order, Respondents Hamilton Park Health Care Center and Confidence Management Systems shall provide complete responses to interrogatories #2 through #21 of the National Labor Relations Board's First Set of Interrogatories.

IT IS FURTHER ORDERED that within 14 days of the date of issuance of this Order, Respondents Hamilton Park Health Care Center and Confidence

Management Systems shall produce all documents responsive to the National Labor Relations Board's First Request for Production of Documents, subject only to valid, substantiated objections.

IT IS FURTHER ORDERED that the Board shall file with this Court and serve upon Respondents Hamilton Park Health Care Center and Confidence Management Systems an itemized statement of costs and expenses, including reasonable attorneys' fees, calculated at the prevailing market rate in Washington, D.C., that the Board incurred in this investigation, preparation, presentation and final disposition of this proceeding. All of said costs, unless agreed to by the parties, shall be fixed by further order of this Court upon submission by the Board of a certified statement of such costs and expenses. Should any dispute arise respecting the Board's submission, this Court may, in its discretion, hold a hearing and issue a report and recommendation. Within 14 days of the parties' agreement as to these amounts, or the Court's determination of attorneys' fees and costs incurred by the Board, whichever event is sooner, Respondents shall deliver a check to or otherwise pay said amount to the Board.

IT IS FURTHER ORDERED that the affirmative defenses set forth by Respondents Hamilton Park Health Care Center and Confidence Management Systems to the Petition of the National Labor Relations Board for Adjudication in Civil Contempt and Assessment of Noncompliance Fines and for Other Civil Relief are hereby stricken.

IT IS FURTHER ORDERED that Respondents Hamilton Park Health Care Center and Confidence Management Systems are hereby held in contempt of this Court's April 22, 2021 Amended Scheduling Order pursuant to Federal Rule of Civil Procedure 37(b)(2)(A)(vii), and this Court **IMPOSES** a prospective non-compliance fine of **\$10,000** if Respondents fail to comply with this Order, and an additional fine of **\$100** for each additional day this Court finds the violations have continued.

Done at _____, Pennsylvania this ____ day of _____ 2021.

TIMOTHY R. RICE
UNITED STATES MAGISTRATE JUDGE

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD,	:	
	:	
Applicant,	:	
	:	No. 20-3133
v.	:	
	:	
HAMILTON PARK HEALTH CARE CENTER,	:	
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HAMILTON PARK HEALTH CARE CENTER,	:	
	:	
Respondents,	:	
	:	
JOHN DOES 1 THRU 5, FICTITIOUS RESPONDENTS,	:	
	:	
Additional Respondents in Contempt.	:	
	:	

CERTIFICATE OF SERVICE

I certify that on May 19, 2021 copies of the foregoing National Labor Relations Board's Motion for an Order Compelling Discovery and Imposing Sanctions, including exhibits, a Brief in Support, Certification by Counsel of Attempt to Resolve Discovery Dispute, and Proposed Order were served upon counsel for the Respondents via the appellate CM/ECF system.

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